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C. O. D. SHIPMENTS BETWEEN DIFFERENT POINTS IN SAME STATE—LOCAL OPTION LAWS.

In the case of Keller v. State, 87 S. W. Rep. 669, the Supreme Court of Texas has rendered an opinion in which Mr. Justice Brooks dissents in a very able opinion. We are inclined to agree with the dissenting opinion.

The facts disclose that appellant shipped from West, in Mc Lennan County, to Pat Moore at Hillsboro, in Hill County, some whisky C. O. D., on an order previously given by Pat Moore to appellant.

There is no question but that this was an ordinary C. O. D. contract. The sole question is where did the sale take place under this character of contract. Numerous opinions are given to sustain the opinion of the majority of the court to the effect that the sale took place and was complete at the time of the delivery of the goods to the carrier at West in Mc Lennan County.

We do not doubt but that in the ordinary course of business that a delivery to a carrier is a delivery to the consignee and that thenceforth the risk is that of a consignee. The reason for the opinion is given by Mr. Justice Davison who says in effect that, since the court has always maintained the above doctrine, it should continue to do so. A line of decisions by the Texas Supreme Court cited in the opinion is to the effect that, where a shipment is made C. O. D. without a contract between the shipper and the consignee, the sale is at the point of destination, if the property is there accepted by the consignee or some one designated by him. So that the difference between these two questions turns upon whether there was a contract or not. Certainly if there was ever a distinction without a difference, this proposition presents it, if the majority opinion is to be held the law.

Here are the two cases: A ships whisky to B upon B's order, C. O. D. at point of delivery. B cannot get the whisky without first paying for it. B pays for it and the sale is made at point of delivery. A, the agent of B, sells C whisky C. O. D. at point of delivery. C must pay for the whisky before he may have it. The sale is made at point of shipment. The Texas court holds that the Texas authorities have said so and there are more of them that say so than do not, therefore we hold with them. A clear case of case law, prescribed by the highest power of the state commanding that two things equal to the same thing are not equal to each other,

The question to our mind seems to turn upon what is meant by a contract. There certainly can be no difference between the above mentioned conditions. Who could say that there was any difference between A's ordering a C. O. D. shipment from B, or ordering a C. O. D. shipment through B's agent? If A made an express agreement with B, by which the whisky was to become the property of A the moment it was placed in the hands of the common carrier, then there could be no question of the sale taking place at the point of shipment, and A could claim the property whether it was paid for on delivery or not. There would then be some sense in saying that there was a contract within the purview of the Texas local option law. But to say that the contract made through B's agent to deliver a thing C. O. D. and a direct order to B to ship C. O. D., which became as much of a contract by B's acceptance as the acceptance of an order by B's agent could possibly have been, made any difference in the nature of the transaction, would seem to be an absurdity. It seems to us that the word contract was used to designate an agreement which would change the nature of a C. O. D. shipment entirely, for to give sense to the use of the word as relating to C. O. D. shipments it must mean that the title passed entirely to the purchaser when the goods were delivered for shipment to the carrier, and that he could get them at the place of consignment without paying for them upon delivery, otherwise it is absurd to say they became the property of the consignee upon delivery to the carrier.

Much stress is laid upon the constitutional question. There is no doubt but that the legislature may not pass any effective bill contrary to the constitution, but while this doctrine is vigorously upheld by the majority opinion, we could not gather from that opin-

ion just what was meant as being the constitutional provision in question, which stands as a guarantee of the right to consider two things equal to the same thing not equal to each other. When we start out with Blackstone's definition of law, we have a talisman by which justice may be attained, as far as a rule or set of rules is concerned. The legislature having adopted a certain policy, the clear intent of which was to curtail and prohibit the liquor traffic, which by the very nature of the acts of curtailment, the liquor traffic was recognized as a curse to the people of the state, all which is common knowledge, would it not be promoting justice for the courts to be moulding the law so that every possible means might be put into use to make effective the wish of the people, rather than to aid those sources which are engaged in a traffic which is a source of degradation to the people, by placing what necessarily is a strained construction of the law?

It would seem from the majority opinion, that the constitutional provision which the opinion of Mr. Justice Brooks was deemed to infringe, relates to the obligation of contracts. That the intendment of the framers of the constitution was to prohibit the sale within the local option territory. If that is true ought not the constitutional provision to have been made effective by so construing the law as to prevent sales as far as possible from being made outside the prohibited territory to be shipped in there? The object and spirit of the provision was to prevent liquor from being brought into prohibited territories. The only rational construction of the law to accomplish this is that of Mr. Justice Brooks, whose reasoning is as clear and incisive as it is reasonable and just. His opinion does just what seems to us it ought. It gives life and vigor to the constitutional provision relating to local option districts, which the other opinion does not. The law is made for practical uses, and if it is intended to command what is right and prohibit what is wrong, it is the business of the courts to give such constructions as will tend to bring about right and prohibit what is wrong. The construction of C. O. D. shipments given by Mr. Justice Brooks is the rational one. The construction placed on C. O. D. shipments by the majority opinion seems strained, unnatural and without logic. We all know that the liquor traffic is a powerful factor in commerce and one the Supreme Court of the United States has declared to be the greatest source of crime, misery and want in our land. Crowley v. Christiansen, 137 U. S. 86, 90, 91. But the supreme court has yet to reach the point of deciding that the interstate commerce laws in their operation, shall not be construed to impinge the police regulations of other states. Even in the matter of the sale of cigarettes, the peculiarly degrading effect of the use of which is common knowledge, the Supreme Court of the United States said in effect: it did not know that it could say that tobacco in this form was so different from other forms, that it could take judicial cognizance of it, to the effect of holding it not to be a legitimate object of commerce. Austin v. Tennessee, 179 U. S. 343; Judson on Interstate Commerce, p. 17. It would have taken judicial cognizance of the fact that arsenic was poison, because it is common knowledge, and yet it is common knowledge that physicians have declared without dissent that tocacco in the form of cigarettes, is far more pernicious than any other, and that its use is productive of the most injurious and deadly consequences to its victims. Yet who doubts but the time is near at hand, when the Supreme Court of the United States will take judicial cognizance of the fact that the cigarette is a form of tobacco which it may take judicial cognizance of, to the effect that it is not a legitimate subject of commerce, and that nothing which tends to the degradation of humanity, which is prohibited by the laws of any state, may be a legitimate subject of commerce, and it will go back to the opinion of Crowley v. Christiansen, *supra*, where it practically has taken judicial cognizance of the fact that the liquor traffic is the great source of crime, degradation and unhappiness in the land, and for this reason say it is not a legitimate subject of commerce between the states. It is the only rational conclusion if the Supreme Court of the United States meant anything by its language in the cases of Crowley v. Christiansen, *supra*, and Kidd v. Pearson, 128 U. S. 1.

But what the interstate commerce laws have to do with purely state regulations, is

not quite clear to us, and yet the Supreme Court of Texas cites the decisions of the United States Supreme Court relating to interstate commerce as an authority for the commerce between different points in a state, but we will let Mr Justice Brooks speak:

"The majority also insist that the Supreme Court of the United States have held that the local option law of this state cannot interfere with interstate commerce shipments, and that therefore, to hold the contrary would make purely state shipments subject to a different law from that of interstate shipments. There is no reason in this for the position the majority occupy. State drummers can be taxed now, but interstate drummers cannot, because it interferes with interstate commerce. Yet I apppehend that the majority would not insist on the repeal of a tax upon state drummers by sheer force of the fact that interstate drummers could not be made to pay a tax."

After reviewing the elementary authorities, the decisions of other states as well as those of Texas, Mr. Justice Brooks logically concludes that they sustain the proposition that a shipment with bill of lading attached to a draft, is a sale at the point of destination upon payment of the draft by the consignee; that "the legislature, through the constitutional provision authorizing the same, has passed a law inhibiting sales in a local option district. That the majority opinion holding that the sale is at the point of shipment under an ordinary C. O. D., is not in accord with reason and philosophy, and is a violation of all the rules of sale. A C. O. D. is a condition precedent to a sale. The sale takes place upon a compliance with the condition, and if the condition is complied with in the inhibited district, the sale takes place there and the party would be guilty of making the sale in the local option district. To hold otherwise renders nugatory and void, and to a large extent destroys, the local option law of the state—a law of sufficient importance to have been made a constitutional provision—and converts the express offices of the state into saloons for the convenient distribution of whisky in prohibited districts, to all parties who desire to violate the law."

Judge Jere Black would have brought his talisman to bear on the above by saying: "The law is made for practical uses, it listens to no metaphysical subtleties and will not upon any terms consent to regard that as right which every sound heart feels to be wrong." He would have held with Mr. Justice Brooks, whose opinion, we predict, will ere long be the law of Texas.

Since writing the above we have the opinion of Mr. Justice Settle, of the Court of Appeals of Kentucky, which is a vigorous expression upon C. O. D. shipments, in the case of Adams Express Co. v. Commonwealth, 87 S. W. Rep. 1111. On p. 1114, he says: "Whatever ground may be urged for holding that this statute is inoperative as to a shipment of spirituous liquors into this state from another state, made by the vendor upon an order received in such other state from a purchaser in this state, it certainly cannot be void, as to a sale wholly made and consummated in this state by a bailee, after the whisky was received from another state." This opinion goes to the full length of sustaining Mr. Justice Brooks on this point and holds that a C. O. D. shipment between points within the state, does not come under the interstate commerce laws relative to C. O. D. shipments. It does hold that in C. O. D. shipments between points in the state, the sale takes place at the point of delivery and not the point where the goods were received. He evidently does not regard the constitutional provisions relative to the impairment of obligations of contract in any way affected by his conclusions, and inferentially condemns the holding of the Supreme Court of the United States "notwithstanding the Wilson Bill," which he says, "was intended to enable the several states under the exercise of the police power, to enact such legislation as would give them the same control over intoxicating liquors shipped therein from other states, after their arrival, whether in original packages or otherwise, as they might exercise over those of home manufacture or production." The language of the Wilson bill, itself, is a recognition of the right of a state, after the arrival within the state, as under the police regulations of the state as much as though it was a home production.

NOTES OF IMPORTANT DECISIONS.

INJUNCTION—RESTRAINING MAINTENANCE OF HOUSE OF PROSTITUTION—RIGHTS OF ADJOINING OWNER.—An important opinion was recently rendered by the Supreme Court of Washington in the case of Dempsie v. Darling, 81 Pac. Rep. 152, where plaintiff owned a vacant lot adjoining a building in which defendant maintained a house of prostitution, and wished to improve the lot, but could not profitably do so, because any building he might erect would be unavailable for any lawful purpose, because of the use to which the adjoining premises were put, he was entitled to an injunction restraining defendant from continuing to maintain the house of prostitution. A demurrer was interposed to a complaint setting up these facts which was sustained by the court below. The Supreme Court reversed the opinion, Dunbar, J., rendering it. In the course of the opinion the court said:

"We think the court erred in sustaining the demurrer to this complaint. It is contended by the respondents, in sustentation of the action of the court, that inasmuch as the plaintiff's lot was a vacant lot, and a house had not already been built upon it which would be affected by the nuisance complained of, the damages are therefore too remote and speculative; that the plaintiff has not yet built upon said lot; and that he may never do so. But the allegation of the complaint is to the effect that it is the purpose of the plaintiff to build at once upon this lot a house for the purpose of lease or rent for some reputable and lawful purpose: and it would seem unreasonable to compel the plaintiff to wait until he had been to the expense of constructing a house, and advertising the same for rent for a reasonable time, before applying to the courts for a remedy which would necessarily, in the natural process of litigation, be delayed for a considerable length of time, thereby depriving him of a right to which he is entitled, viz., to enjoy the use of his property without hindrance through the operation of a nuisance. It may be conceded at the outset that, when a party seeks the aid of a court of equity by injunction, he must show not only a clear legal or equitable right, but also a well-grounded apprehension of immediate injury to his rights, and that, where no necessity is shown for the injunction as a means of protection to such rights, it should not be granted. But it seems to us that the immediate injury is sufficiently set forth in the complaint under consideration.

The case of Dana v. Valentine, 5 Metc. 8, cited by respondents, and which it is claimed is exactly in point, seems to us not to reach the case under consideration at all. There, it is true, the court used the following language, quoted in respondents' brief, viz.: 'Upon no principle of equity can the court interpose in their favor by injunction on the defendant to desist from carrying on his trade; there being no certainty that dwelling houses will ever be erected on these premises, or, if there should be, it is uncertain when such erections may be made. To require this extraordinary relief, the injury complained of must actually exist, or the danger must appear to be certain and immediate, and not depending on any contingency. We think it therefore very manifest that these owners of vacant lots have made out no title to the interposition of a court of equity.' An examination of that case, however, reveals the fact that that action was brought against the defendant both by the owners of vacant lots and by the owners of buildings adjacent to the alleged nuisance, which was the business of manufacturing soap and candles and of slaughtering cattle, and the injunction was denied on two grounds, viz.: 'First, that the plaintiffs, if they had been injured, had a complete and adequate remedy at law; and, second, that the defendant had made out a good prescriptive right and justification.' So that in any event the complaint of the parties who owned the vacant lots would have failed under the general ruling of the court on the two propositions just above mentioned, and what was said in relation to them was purely without the case. But in any event their right to relief was denied specially upon the ground that they had a complete and adequate remedy at law, and that an action at law for the recovery of damages for the diminution of the value of their lands by the nuisance alleged was available to them: there being no certainty that any dwelling houses would ever be erected upon the premises, or, if they should be, when such erections would be made, and that equity would not reach beyond these contingencies to afford relief. But as we have before noticed, so far as the certainty of the building is concerned, and also the certainty of the time, the allegation of the complaint, which must be taken to state the truth, is to the effect that the building will be erected at once. And as to the second proposition there decided by the court, that an action for damages was the only resort of the plaintiffs, the owners of vacant lots, that question was decided adversely to the respondents' contention by this court in Ingersoll v. Rousseau, 35 Wash. 92, 76 Pac. Rep. 513, where it was held that injunction lies to abate the maintenance of a bawdy house as a public nuisance specially injurious to plaintiff's adjoining property, used for residence purposes—the common-law remedies of indictment and action on the case being inadequate—and that this rule has not been changed by statute in this state. The above conclusion was reached after a lengthy and evidently painstaking investigation of the law and an investigation of the authorities, ancient and modern, on the subject, and puts at rest the contention made by the respondents that the remedy by injunction was not open to the plaintiff in this case if the petition in other respects stated a cause of action.

The respondents also cited High on Injunctions,

774, where it is said by that author: 'To justify a court of equity in enjoining a nuisance of the class under consideration, the person aggrieved must show to the court some actual, substantial damage, and not merely a remote, contingent, or prospective injury.' But the preceding section discloses the class under consideration. The author there was discussing injunctions which were asked for against the operation of legitimate businesses, such as the burning of brick, the erection of a chandlery or of slaughter houses, or of livery stables, or the operation of limekilns or gasworks—businesses that were in themselves lawful enterprises, which the government is anxious to foster under proper regulations and locations. But the nuisance complained of in this case is of an entirely different character. It is degrading, immoral, indecent, and always under the ban of the law, and courts ought not to be too exacting with citizens who are asking relief from such impositions upon their rights. An examination of the other cases cited by respondents shows that they are not applicable to the facts stated in this complaint, as construed by the decision of this court in Ingersoll v. Rosseau *supra*."

The court's opinion is certainly full and complete, and rounds out the fact that the law is made to prohibit what is wrong, and makes sensible discrimination between those cases where complaint has been made of some lawful business such as the burning of brick, operation of limekilns, and that which is immoral and indecent. It seems that an injunction will not lie to restrain erection and location of modern buildings within the fire limits in violation of a municipal ordinance; the remedy being by enforcement of an appropriate penalty—so held in Mich., Mo., N. Y., Pa., Wisc., Village of St. John. 2 McFarlan, 33 Mich. 72; Rice v. Jefferson, 50 Mo. App. 464; Young v. Scheu, 56 Hun, 507, 9 N. Y. Supp. 349; Village of New Rochelle v. Lang, 27 Hun, 608, 27 N. Y. Supp. 600; Elwood City v. Main (Com. Pleas), 16 Pa. Co. Court R. 474; City of Janesville v. Carpenter, 77 Wis. 288, 46 N. W. Rep. 128, 8 L. R. A. 808, 20 Am. St. Rep. 123. *Contra*, see Kaufman v. Stein, 138 Ind. 49, 37 N. E. Rep. 333.

In Illinois a court of equity may enjoin against an act threatened, which if committed would be punishable under the criminal laws as a nuisance. People v. City of St. Louis, 5 Gilman, 358, 48 Am. Rep. 339. See also Cope v. Dist. Fair Ass'n, 99 Ill. 489; Barrett v. Mt. Greenwood Cemetery Ass'n, 159 Ill. 385. While equity will never interfere by injunction to prevent the commission of a crime, it may enjoin an act which threatens irreparable injury to property of an individual, though such act may also be a violation of the criminal law. Hamilton & Brown Shoe Co. v. Saxey, 131 Mo. 212, 32 S. W. Rep. 1106. See Vol. 27 Cent. Digest, Injunction, Sec. 176.

MUNICIPAL ORDINANCES RELATING TO MATERIALS ENTERING INTO PUBLIC WORK WHICH INTERFERE WITH INTERSTATE COMMERCE AND THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF OTHER STATES.

1. Interstate commerce is within the exclusive control of the congress.

2. Local interference with interstate commerce as illustrated by license for privilege of selling goods, etc.

3. Municipal ordinance requiring all stone used in public work to be dressed in the state.

1. *Interstate Commerce is Within the Exclusive Control of the Congress.*—By virtue of the commerce clause of the federal constitution, the congress possesses exclusive jurisdiction "to regulate commerce with foreign nations and among the several states."[1]

This provision has been construed by the United States Supreme Court, as follows:

"The constitution of the United States, having given to congress the power to regulate commerce, not only with foreign nations but among the several states, that power is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system or plan of regulation; that where power of congress to regulate is exclusive, the failure of congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions, and any regulation of the subject by the states, except in matters of local concern only, is repugnant to such freedom; that the only way in which commerce between the states can be legitimately affected by state laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a state provides for the security of the lives, health and comfort of persons and the protection of property and imposes taxes upon persons residing within the state or belonging to its population, and upon vocations and employments pursued therein, not directly connected with foreign or interstate commerce, or with some other employment or business exercised under authority of the constitution and laws of the United States; and impose taxes upon all property within the state, mingled with and forming part of the great

[1] Const. U. S. art. I, sec. 8, par. 3.

mass of property therein; but that, in making such internal regulations, a state cannot impose taxes upon persons passing through the state or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the state from abroad, or from another state and not become part of the common mass of property therein; and no discrimination can be made, by such regulations, adversely to the persons or property of other states; and no regulations can be made directly affecting interstate commerce."[2]

"Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities between the citizens or subjects of foreign countries and between the the citizens of different states."[3]

In its broadest sense, commerce includes intercourse, and the means of intercourse, as applied to trade.[4]

2. *Local Interference with Interstate Commerce as Illustrated by License for Privilege of Selling Goods, etc.*—The attempt to interfere with or regulate interstate commerce is shown in a variety of ways by local regulations. But a reference to such regulations as impose a license tax for the privilege of carrying on trades, occupations, etc., and which are uniformly held unconstitutional, will suffice to indicate the rule of law applicable to local restrictions affecting interstate commerce respecting materials which are used in public works.

The Supreme Court of the United States declared unconstitutional a state law which imposes a license tax on "all drummers and all persons not having a regular licensed house of business in the taxing district," who should offer for sale or sell goods, wares or merchandise therein by sample. "This kind of taxation," remarked the court, "is usually imposed at the instance and solicitation of domestic dealers as a means of protecting them from foreign competition. And in many cases there may be some reason in their desires for such protection. But this shows in a still stronger light the unconstitutionality of the tax. It shows that it not only operates as a restriction upon interstate commerce but that it is intended to have this effect as one of its principal objects. And if a state can, in this way, impose restrictions on interstate commerce for the benefit and protection of its own citizens we are brought back to the condition of things which existed before the constitution and which was one of the principal causes which led to it."[5]

The doctrine of this case has been repeatedly affirmed by the Supreme Court of the United States, in holding unconstitutional state laws and municipal ordinances seeking to impose a license tax on non-resident (of the state) drummers and commercial agents selling by sample.[6]

That the meaning of the interstate commerce clause may be better understood and its scope more clearly comprehended, it should be observed that, the fact that the local law by its terms is made applicable to all of the class, as drummers or commercial travelers, or those going from place to place selling goods by the sample, does not exempt it from the operation of this clause of the constitution. Prior to the decision of the United States Supreme Court, above mentioned, numerous decisions of state courts held that if the law was free from discriminating features it was constitutional. Respecting this contention the language of the federal supreme court is clear and pointed: "It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other states: that all are taxed alike. But that does not meet the difficulty. Interstate commerce can not be taxed at all even though the same amount of tax should

[2] Robbins v. Shelby Taxing District, 120 U. S. 489, quoted with approval in Caldwell v. North Carolina, 187 U. S. 622, 625 (1903). For history and necessity of federal control of interstate and foreign commerce, see article of James Madison, 42 Federalist, p. 262 *et seq*; Opinion of Chief Justice Marshall, in Brown v. Maryland, 12 Wheat. (U. S.) 419; of Mr. Justice Miller in Cook v. Pennsylvania, 97 U. S. 566.

[3] Welton v. Missouri, 91 U. S. 275, 280; Preston v. Finley, 72 Fed. Rep. 850, 859.

[4] Paul v. Virginia, 8 Wall. (U. S.) 68, 83.

[5] Per Bradley, J., in Robbins v. Shelby Taxing District, 120 U. S. 489.

[6] Caldwell v. North Carolina, 187 U. S. 622; Brennan v. Titusville, 153 U. S. 289; Crutcher v. Kentucky, 141 U. S. 47; Stoutenburgh v. Hennick, 129 U. S. 141; Asher v. Texas, 128 U. S. 129; Lyng v. Michigan, 135 U. S. 161.

be laid on domestic commerce, or that which is carried on solely within the state. This was decided in the case of the State Freight case.[7]

"The negotiations of the sale of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce. A New Orleans merchant cannot be taxed there for ordering goods in London or New York, because, in one case it is an act of foreign, and, in the other, of interstate commerce, both of which are subject to regulation by congress alone."[8]

In accordance with the doctrine above outlined, state statutes and municipal ordinances which discriminate in the license tax imposed by them against persons or produce of other states, are uniformly held unconstitutional, not only because such laws constitute an interference with interstate commerce, but because they, also, are in violation of the privileges and immunities of citizens in other states, guaranteed by the federal constitution.[9]

Discriminating regulations whether they relate to products of other states or citizens of other states and whether in the form of a license tax or in any other form, contravene the United States constitution.[10]

3. *Municipal Ordinances Requiring all Stone Used in Public Work to be Dressed in the State.* —A recent decision of the Supreme Court of Missouri,[11] declined to hold void as violative either of the interstate commerce clause or the 14th amendment of the United States Constitution, a general municipal ordinance requiring all ordinances and contracts authorizing the doing of public work in a particular city, which involved the use of dressed rock, granite or stone, to contain a provision that the work of dressing such rock, granite or stone should be done within the boundaries of the state.

Concerning the contention that the ordinance contravened the interstate commerce clause, the court remarked that no reference had been made "to any line of authoritative or persuasive utterances of the recognized oracles of the law holding that a regulation of the character in question impinges upon the constitutional right of Congress to reguate commerce between the several states. In New York, by a divided court some consolation may be found for the theory advanced.[12] But these were cases where by direct proceedings the right to enforce a state labor law was challenged and the authority of the cases is greatly weakened by Atkin v. Kansas,[13] in which the Supreme Court of the United States held that, as to public improvements (the constitutionality of such law, so far as private work was concerned, not being decided) it was within the power of the state, as guardian and trustee of its people, to prescribe the conditions upon which it will permit public work to be done.

"On its face it must be conceded the ordinance is innocent of blame in this regard, for it in no wise and nowhere relates to interstate commerce, nor is the right of any citizen of the United States to at any time ship stone of any character, dressed or undressed, anywhere, by rail, water or otherwise, referred to or interfered with, directly or indirectly, nor is the traffic in such rock regulated, unless it can be said that the extent of the market for rock dressed elsewhere than in the territorial limits of Missouri may be inferentially lessened by excluding such rock from place in the public improvements of St. Louis. But on this score it may be said that the reasonable right to select material for street

[7] 15 Wall. (U. S.) 232.

[8] Robbins v. Shelby Taxing District, 120 U. S. 489, 497.

[9] Constitution, art. IV, sec. 2; Walling v. Michigan, 116 U. S. 446; Ward v. Maryland, 12 Wall. (U. S.) 418 reversing 31 Md. 279. Compare, Crandell v. Nevada 6 Wall. (U. S.) 35; Minneapolis Brewing Co. v. McGillivray, 104 Fed. Rep. 258. Ordinances discriminating against non-resident's goods held void. *Ex parte* Thornton, 12 Fed. Rep. 538; Fecheimer Bros. & Co. v. Louisville, 84 Ky. 306, 2 S. W. Rep. 65.

[10] Tiernan v. Rinker, 102 U. S. 123; Guy v. Baltimore, 100 U. S. 434; Vines v. State, 67 Ala. 73; Arkansas v. McGinnies, 37 Ark. 362; *Ex parte* Thomas, 71 Cal. 204, 12 Pac. Rep. 53; State v. Zophy, 14 S. Dak. 119, 84 N. W. Rep. 391; Graffty v. Rushville, 107 Ind. 502, 8 N. E. Rep. 609; Rodgers v. McCoy, 6 Dak. 238, 44 N. W. Rep. 990; Bliss's Petition, 63 N. H. 135; Sayre Borough v. Phillips, 148 Pa. St. 482, 24 Atl. Rep. 76; Buffalo v. Reavey, 55 N. Y. Supp. 792; State v. Stevenson, 109 N. Car. 730, 14 S. E. Rep. 385; Georgia Packing Co. v. Macon, 60 Fed. Rep. 774; Cullman v. Arndt, 125 Ala. 581, 28 So. Rep. 70; Indianapolis v. Bieler, 138 Ind. 30, 36 N. E. Rep. 857.

[11] Allen v. Labsap, 87 S. W. Rep. 926.

[12] People v. Coler, 166 N. Y. 144, 59 N. E. Rep. 776; People v. Coler, 166 N. Y. 1, 59 N. E. Rep. 716, 52 L. R. A. 814, 82 Am. St. Rep. 605.

[13] 191 U. S. 207, 24 Sup. Ct. Rep. 124, 48 L. Ed. 148.

improvement exists and is to be accorded to a municipal government under the repeated adjudications of this court."[14]

Thus it clearly appears that, the court concedes that, on account of the restriction, this market is "inferentially lessened," and that the ordinance does in fact exclude rock dressed elsewhere than in Missouri from place in the public work of the city. Yet the court finds the justification for the exclusion in the fact that there exists on the part of the municipal government the reasonable right to select material for public improvements; and, therefore, this liberty of selection relieves the ordinance from the vice of interfering with interstate commerce. In a word, the charter power to prescribe the material is sufficient authority, in the reasoning of the court, to enable the local government to say by municipal ordinance to all the world: "You shall not land at our port, nor even within the limits of the state, dressed rock, granite or stone, coming from beyond the state, which is to be used in public work in our city, notwithstanding the United States Constitution says the Congress shall have exclusive power to regulate commerce among the several states, and that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States."

If this reasoning is sound, a new rule of law which will command wide attention has been established; otherwise not. The preliminary observation may be made that, the right to impose conditions under which public work shall be done and the reasonable right to select materials for such work, do not appear sufficient to supersede provisions of the Federal Constitution. The designation of rock, granite or stone, and the requirement that it shall be dressed, are matters for the exclusive decision of the municipal authorities. Thus the selection of Georgia granite would, by implication, exclude all granite from other states and foreign countries, yet it could not be urged with reason that such choice was an interference with interstate commerce, within the meaning of the commerce clause. So, to take an extreme illustration, the specification of a particular style of dressing of such rock, granite or stone, although such work was executed at a particular place only and by a single person, firm or corporation, would not violate the commerce clause, however invalid (if at all) it might be for other reasons. But, if circumscribing with precision the boundaries of the place, whether it be city, county, district or state, where the labor of dressing shall be performed, involves the exclusion of any citizen or class of citizens from engaging in such services, obviously the imposition of conditions and selection of materials (the undoubted exclusive prerogatives of the municipal government) thus becomes subordinated to the mandate of the United States Constitution, which, in express terms, commands that the privileges or immunities of citizens in all the states shall be maintained inviolate.

On its face, casually perused, the ordinance appears to be a harmless enactment. In terms, its command is: The stone, granite or rock shall be dressed in Missouri and not elsewhere. To dress such material, for the purpose specified, in Illinois or Georgia or Alabama is unlawful, because prohibited. Before this ordinance became a law, citizens of any state or foreign country were at liberty to dress the designated material at any place and for any purpose to be used in any part of the world. Now the ordinance, in imperative tones, says to each and every one of such citizens: "You shall not dress such material to be used in the public works of our city, unless you do so within the corporate limits of our state." The privilege of doing such labor elsewhere is absolutely and unqualifiedly prohibited. It is expressly forbidden in all other states except one. Therefore, by clear implication, all persons or citizens are excluded from taking up this calling unless they are residents, or temporary inhabitants, of Missouri. The purpose of the ordinance is thus exposed. To employ, in substance, the reasoning of the Supreme Court of the United States in a license tax case above mentioned, this kind of legislation is usually imposed at the instance and solicitation of domestic firms or organizations as a means of protecting them from foreign competition. In many cases there may be some reason in their desire for such protection. But this shows in a still stronger light the unconstitutionality of the ordinance. It shows that it not only

[14] Allen v. Labsap, 87 S. W. Rep. 926.

operates as a restriction of the privileges or immunities of citizens of other states, and, as a restriction on interstate commerce, but that it is intended to have that effect as one of its principal objects.[15]

In determining the constitutionality of such an ordinance, neither the right to prescribe the conditions for the doing of public work, nor the reasonable right to select materials for such work, can obscure the real point at issue. The true criterion is the practical operation of the ordinance, not as affecting the powers of the municipal officers touching public work, as it relates to the constitutional rights of citizens in other states, and the perfect freedom of interstate and foreign commerce from any other regulations than those imposed by the Congress, which, under the Federal Constitution, is the supreme authority in this respect. If the test applied by the Supreme Court of Missouri should be regarded as sound, then any power conferred by a municipal charter upon its public officers would justify any violation of the Federal Constitution. It is not a question of the power of municipal authorities under the charter of the city, or any constitutional or statutory provision of the state, but the sole question is, Do they, in enforcing the ordinance in question, interfere with the exclusive power of the Congress in the regulation of interstate and foreign commerce, or deny any citizen rights guaranteed to him by the Federal Constitution?

It follows, therefore, that as the reasoning of the court is bad, the rule declared is untenable. As a precedent, it is as likely to be as "innocent of blame" as the court pronounced the ordinance to be, as an offender against the National Constitution.

[15] Robbins v. Shelby Taxing District, 120 U. S. 489.

EUGENE MCQUILLIN.

St. Louis, Mo.

WILLS—CONSTRUCTION OF RIGHT OF LIFE TENANT "TO ENJOY."

BOARD OF TRUSTEES OF WESTMINSTER COLLEGE v. DIMMITT.

St. Louis Court of Appeals, Missouri, May 16, 1905.

Where a will bequeathed to testator's wife certain funds to hold, possess, and enjoy during her life, remainder to complainant, the wife was entitled to expend the fund for her personal benefit if she chose to do so, and hence complainant was not entitled to recover the same from her estate without proof that there was a residue remaining.

BLAND, P. J.: Omitting caption, the petition is as follows:

"Plaintiff states that it is a body corporate, duly incorporated by act of the General Assembly of the state of Missouri.

"Plaintiff further states that on the—day of—, 1894, Joseph I. Bowles died testate at the county, of Shelby, in the state of Missouri; that this will was duly admitted to probate in the probate court of said Shelby county, Missouri.

"That by his will, so probated as aforesaid, said Joseph I. Bowles bequeathed all his property of every description to his wife, Elvira A. Bowles, for and during her natural life, and at her death the whole of his said estate should pass to and vest in this plaintiff.

"Plaintiff further states that on the final settlement of said estate, on the—day of—, 1898, there was a balance in the hands of the executor of said estate of six hundred eleven dollars and thirty-nine cents, after the payment of all debts and expenses of administration, and that said amount was paid by the executor of said estate to said Elvira A. Bowles, the life tenant under the will aforesaid, and that said sum so paid as aforesaid constituted a trust in the hands of said Elvira A. Bowles for the use and benefit of this plaintiff.

"Plaintiff further states that said Elvira A. Bowles died testate on the—day of November, 1900, at the county of Shebly, Missouri, and that her will was duly admitted to probate in the county of Shelby aforesaid, and that the defendant, W. A. Dimmitt, is the legally qualified and acting executor of the will of said Elvira A. Bowles, deceased; that said sum of six hundred and eleven dollars and thirty-nine cents continued in the possession and custody of said Elvira A. Bowles until her death, and then passed into the possession and custody of the defendant herein, and that the same is now in his possession and custody; that the same constitutes a trust fund in the hands of the defendant herein in favor of the plaintiff.

"Wherefore plaintiff prays the court for an order directing the defendant herein to pay plaintiff the amount of said trust fund, to wit six hundred and eleven dollars and thirty-nine cents, and for such other relief as the plaintiff may be entitled to."

The answer is as follows:

"Defendant, for answer to the petition of plaintiff filed herein, admits the incorporation of plaintiff as therein pleaded.

"Further answering, he admits that Joseph I. Bowles died during the year 1894, testate, and that his will was admitted to probate, and that by its terms the property therein described was bequeathed as stated in said petition; that at the final settlement of his estate there was paid to

Elvira A. Bowles, his widow, the sum of six hundred and eleven dollars and thirty-nine cents, as and for the balance of the personal assets in said estate, and that same was paid to her as the life tenant under said will of said deceased.

"He also admits the death of said Elvira A. Bowles, and his appointment and qualification as her executor, as stated in the petition of plaintiff; and that he received as the assets of her estate, in his capacity of executor, a sum equal to or greater than the sum of six hundred and eleven dollars and thirty-nine cents as aforesaid.

"Defendant further answering, states that he does not know whether the sum aforesaid received by his decedent was used by her or expended in her lifetime, or whether said fund was kept by her as a trust fund, which at her death passed into his hands as executor.

"Wherefore he prays the court to inquire into the facts and to declare the law of the case, and for such judgments and orders in relation thereto as may be proper."

The clauses of the will of Joseph I. Bowles relevant to the controversy are as follows:

"First: I bequeath to my beloved and faithful wife, Elvira Ann Bowles, who for so long a time has shared my fate and fortune, all of my estate of whatsoever kind or character, whether personal property or real estate, to hold, possess and enjoy during her natural life."

"Fifth: After the death of my said wife, I desire that all of my estate of whatever kind whether personal property, real estate or mixed property, * * * shall be converted into money, so soon as practicable after my wife's decease and when the same is converted into money I will and direct that my executor hereinafter named shall pay the same to the Board of Trustees of Westminster College, at Fulton, in the State of Missouri, in amount and manner following," etc.

The evidence shows that the widow of Joseph I. Bowles took her absolute property, and had allowed in the probate court certain claims, amounting altogether to over $3,000. It is admitted by the answer that the wife received the sum sued for, $611.39, from the executor of her husband's will, as the life tenant of said sum. This money was paid Mrs. Bowles in 1898, and in about two years thereafter she died. The evidence also shows that Mrs. Bowles had an estate in her own right of the value of about $15,000, of which six or seven thousand dollars was invested in bank stocks, and that her estate had always been kept separate and apart from that of her husband. The $611.39 received from her husband's estate was not kept separate and apart from her individual estate, and for this reason plaintiff alleges that it could not trace or identify it among the assets of Mrs. Bowles' estate. There is no evidence to show that she ever invested this money, nor any evidence to show in what manner she expended it, if she did expend it. Defendant testified that Mrs. Bowles kept house, and may have expended the fund to defray her ordinary family expenses. There is no evidence to show what her income was, if anything, from her individual estate. The court rendered judgment for defendant, from which plaintiff appealed.

The contention of appellant is that Mrs. Bowles as to the principal sum ($611.39) received from her husband's estate, was the trustee of an express trust under the terms of the will, with the right to appropriate the interest only which she might receive therefrom to her own use. The clause of the will giving the estate to Mrs. Bowles gave it to her "to hold, possess and enjoy during her natural life." After the death of Mrs. Bowles, the will provided that all of the estate of the executor, except such as had been disposed of by special devises, should be converted into money and paid to plaintiff. The will gave the property to Mrs. Bowles to enjoy. In Rountree v. Dixon 105 N. Car. 350, 11 S. E. Rep. 158, it was held that the term "enjoy," as used in a will providing that the testator's wife "shall hold, use, occupy, and enjoy" his entire estate, both real and personal, as he had done before, and to care for his children in the same way during her natural life, means she is to have the benefit of it and use it, as her husband had in his lifetime, in caring for herself and children. One of the definitions of the term "enjoy" given by Webster is: "To have, possess, and use with satisfaction; to occupy or have the benefit of." It seems to us that Mrs. Bowles under the first clause of the will, had the right to apply the $611.39 received from her husband's estate in any way that would contribute to her well-being; that the fund was hers to expend for her personal benefit, if she chose to do so. Her estate in the fund was a life estate with power of use (Russel v. Eubanks, 84 Mo. 82), and the plaintiff was a residuary legatee of what remained unexpended. But in view of the fact that Mrs. Bowles had a right to use the fund for her personal enjoyment, we think it devolved upon the plaintiff to show that there was a residue of the fund after her death to entitle it to recover. It is confessed that no such showing was made or could be made.

The judgment is therefore affirmed. All concur

NOTE.—*Powers May be Created by Will, but Such Powers are to be Governed by the Intent of the Testator.*—The language in the above case seems to us to have evinced an intention to allow the widow a life estate and that this was a mistake in giving the construction which was placed upon the language of the will by the court. The authority given to support the proposition laid down by the court does not seem to us to bear out the interpretation placed upon the words of the will in the principal case. The case referred to is Rountree v. Dixon, 11 S. E. Rep. 158. In that case the provision in the will was that the wife "shall hold, use, occupy, and enjoy my entire estate, both real and personal, as I have done heretofore, to care for my children in the same way during her natural life, and that she may allot to each child its *pro rata* share," does not give the wife power to create debts chargeable against the estate. It seems to us

that the intent of the language was to give the wife the use of the money during her life. The language in the principal case is: "I bequeath to my wife * * * all my estate of whatsoever kind or character, whether personal property or real estate, to hold, possess and enjoy during her natural life."

Then follows the provision that: "After the death of my wife I desire that all of my estate of whatever kind, whether personal property, real estate or mixed, shall be converted into money; I will that my executor hereinafter named, shall pay the same to the board of trustees of the Westminster College, at Fulton, in the state of Missouri, in the manner following:"

The particularity with which the bequest was made to the Westminster College shows that the testator expected that there would be money to be paid to that institution. It also appeared that his wife had an estate of her own, sufficient to have taken care of her (no children are mentioned). This fact would tend to strengthen the idea that the intention was to bequeath a life estate to his wife and the remainder to the college. Remainder did not mean that she could spend what she pleased and if there was a remainder it was to go to the college. The remainder was created when he made the will giving her a life estate. It seems to us the intention was very clear to this effect. How could she hold, possess and enjoy an estate during her natural life if she had the right to and did use it up before half the remainder of her natural life was spent. The language is clearly to the effect that she is to hold the estate during her natural life and to possess and enjoy it. This gave her no right to the principal estate. There is no intention expressed whereby it could be inferred that she could use up the estate.

Almost the same language is used in the case of Rountree v. Dixon, *supra*, which declares that no right was given to impose a debt on the estate by the wife. The language there was that the testator's wife was to "hold, use, occupy, and enjoy my entire estate, both real and personal." The court said: "We are of the opinion that the court below misinterpreted the material clause of the will of F. W. Dixon, the deceased testator, and erroneously gave judgment charging the estate, personal and real, with the debts of the plaintiff. The testator does not by the clause in question of his will, devise to his wife an estate for her life, or any estate in his real property, or give her absolutely his personal property. The language employed is not appropriate to create such an estate, nor does a purpose to do so appear from the terms or obvious purpose of the will. The testator directs that his wife shall "hold, use, occupy and enjoy all his property as he did in his life time, for a specified purpose. * * * It is not said that she shall have or own the land, may sell it or any part of it, or dispose of it all for any purpose, except that she may 'alot' to each of his children, as he or she shall become of age, his or her *pro rata* share." It seems to us that the St. Louis court of appeals erred in the principal case in view of the authority given to support it.

JETSAM AND FLOTSAM.

FRENCH BARRISTERS AND THEIR FEES.

The judgment of the first chamber of the tribunal of the Seine in an action by a client to recover from a barrister the amount of the fee paid to him has caused much talk and excitement among the members of the bar of Paris. By the immemorial constitution and usage of that bar (corresponding to the rule prevailing with English barristers), the fee of an advocate is considered as a gratuity, and he can maintain no action to recover it. It further appears that it is contrary to every tradition of the profession that an advocate should be held liable in any legal proceeding for the recovery of money which he has received by way of honorarium from a client. An action for libel having been brought against a newspaper by a lady who was in narrow circumstances, she retained as her counsel a gentleman in good practice at the junior bar, and obtained judgment for 10,000 francs as damages. The defendants appealed, and the plaintiff, after an interview with her counsel at the palais de justice, agreed, by way of compromise, to accept 6,000 francs from the defendants and the insertion of certain notices in the public press. The plaintiff at the same time, at the suggestion of her advocate, wrote a letter requesting the defendants to pay him as his honorarium 1,000 francs, which was accordingly done. The court found as a fact that the plaintiff only consented to this deduction from the amount due to her under compulsion arising from the undue influence exercised over her by her advocate, her urgent need of money, and her anxiety lest the payment of what was due to her should be indefinitely delayed. Having regard to this finding, the court ordered the advocate to repay to his client the sum of 900 francs, with interest. The council of the bar of Paris had previously considered a complaint from the plaintiff relating to the same matter and held that as regarded the quota of the fee they were not authorized to tax the honorarium claimed by an advocate, and though it was in the particular instance claimed in a manner which might be open to some criticism, the plaintiff had established no ground for her complaint. In this conflict of decisions the sympathy of the profession is wholly with the advocate, and an address assuring him of their sympathy has received numerous signatures.

RAILROAD REBATES AND FAVORITISM.

To say without qualification either that railroad rebates are illegal or that they are legal seems to be impossible under the decisions of the courts. Even at common law the majority of the modern cases, at least, as appears from a note in 18 L. R. A. 105, hold that at common law a carrier cannot unjustly discriminate between persons in the same circumstances so as to ruin or injure the business of one person and build up that of his rival. On the other hand, it seems to be a fair implication from the majority of the decisions that, in the absence of statutory restriction, some favor may be shown by a common carrier to one customer over another, if this goes no farther than merely to favor the one without working injury to the other. It was distinctly held in Cleveland, C. C. & I. R. Co. v. Closser, 126 Ind. 348, 9 L. R. A. 754, 3 Inters. Com. Rep. 387, 22 Am. St. Rep. 593, 26 N. E. Rep. 150, that a rebate given by a carrier to a shipper is not necessarily illegal, since it might be given in cases without making any unjust discrimination or unduly favoring one at the expense of another. Such is also the effect of the decision in Laurel Cotton Mills v. Gulf & S. I. R. Co. (Miss.), 66 L. R. A. 453, 37 So. Rep. 134. In the latter case a rebate on the rates paid for manufactured articles of the amount previously paid on raw materials shipped to the mill was held not to constitute a violation of a statute forbidding rebates. On the other hand it was held in Cook v. Chicago, R. I. & P. R. Co., 81 Iowa, 551, 9 L.

R. A. 764, 3 Inters. Com. Rep. 383, 25 Am. St. Rep. 512, 46 N. W. Rep. 1080, that the allowance of a rebate to some customers and not to others for precisely similar services constitutes an unjust discrimination which is illegal at common law. The same decision was made in Fitzgerald v. Grand Trunk R. Co., 63 Vt. 169, 13 L. R. A. 70, 3 Inters. Com. Rep. 633, 22 Atl. Rep. 76. Such rebates are, of course, illegal under the Interstate Commerce Law, and this was held in Bullard v. Northern P. R. Co., 10 Mont. 168, 11 L. R. A. 246, 3 Inters. Com. Rep. 536, 25 Pac. Rep. 120, to apply to contracts for such rebates that had been made before that law was passed. Though the right of the public to equality in the service of common carriers is clear, the power of the public to get such equality seems in some states to be hopelessly lost. In one state, at least, a man who should seriously undertake to enforce his right to have equal service and equal rates on the railroads with those given to the trusts would be looked upon as of doubtful sanity. In that state these trusts are said to control the entire carrying capacity of the railroads for certain products, and thereby to ruin the business of every individual competitor. It seems, also, to be thought entirely hopeless to appeal either to the legislature or the courts for relief against such oppressive monopoly.

The hope of relief by congress from the power of great corporations and trusts that crush out competition by the aid of secret and illegal rebates and other favoritism in railroad service has been much stimulated in the past few months. It may not be easy to frame a law that will be wise and just. It may be more difficult still to enforce the law when enacted. Some railroad men and other men quite freely declare that the enforcement of a law against rebates is impossible. This is a dangerous contention. Once let the people believe it true and the remedies they will speedily adopt, whether wise or not, will be drastic and far-reaching. There is already a widespread belief that the power of these great aggregations of capital is too great for the safety of the public. Nothing more would be needed to make this belief universal and ripen it into a stern conviction than to show that the government is powerless to enforce against them a just law for the protection of its citizens. If they are amenable to control by such laws, the time is come for the enactment and enforcement thereof.

Simple justice is the demand. A state which is powerless to provide it is a failure. If any creature of the state has become more powerful than the state itself—if it can work oppression and injustice with impunity—it is time for the people to understand it clearly. When they do, they can be trusted to deal with the problem. It is not chiefly a question of exorbitant rates, but of fairness and equality in rates. Even when railroad rates are too high, if there is no unjust discrimination, the conditions of trade and commerce may be at least tolerable; but, when a giant monopoly enters any field, and gets such secret and unlawful preferences from the railroads that competition with it is impossible, a tyranny is established which no free country can tolerate.—*Case and Comment.*

BOOK REVIEWS.

ALDERSON ON RECEIVERS.

We are in receipt of a new work on Receivers by Mr. William A. Alderson, of the Los Angeles Bar. Mr. Alderson while producing a new work, practically speaking, on a subject of great importance, which has been rapidly developing, has become well and favorably known as a legal writer of more than ordinary merit, in the publication of Beach on Receivers, Alderson's Edition, 1897. He also is the author of an excellent treatise on "Judicial Writs and Process." This work brings the subject up to date and is admirably handled, making a new work, which is justly entitled Alderson on Receivers, and covers the whole field, including pleading and practice, with numerous notes on recent decisions, which have added to the law on the subject. The work is one which the CENTRAL LAW JOURNAL takes great pleasure in commending to its readers. The progress of the law on this subject makes such a work of great practical importance to the practitioner and we believe that it is by far the most valuable work published at the present time.

Printed in one volume and published by Baker, Voorhis & Co., New York.

COLLIER ON BANKRUPTCY.

We have the 5th edition of Collier on Bankruptcy at hand. It is rare that a work passes so rapidly into editions as this work has. It is the pioneer work since the acts of 1898, and Mr. Collier's thorough mastery of the subject made his views of the law those which have been a guide to the courts, where there were no decisions upon the particular points at the time in dispute. Since the enactment of the U. S. Bankruptcy Acts the judicial legislation with reference to those acts has been so rapid that in less than seven years Collier on Bankruptcy has passed into the 5th Edition. This marks the importance of and the actual necessity of the practitioner being up to date on this subject, the complications of which are so ably handled by Mr. Collier and his successors.

The last edition is by Mr. Frank B. Gilbert. There is no need for other comment upon this edition, to assure the legal fraternity that the handling of the matter has been thorough and is what the practitioner wants.

Printed in one volume by Matthew Bender, Albany, N. Y.

JUDSON ON INTERSTATE COMMERCE.

We have before us Judson on Interstate Commerce This is a new work by Mr. Frederick N. Judson, of the St. Louis Bar.

As Mr. Judson has already produced a most excellent work on Taxation, which has found favor with the legal fraternity, we are not surprised to find this work on Interstate Commerce one of very high order. The erudition displayed by Mr. Judson shows him to be master of the subject. While all this is to be expected of a lawyer of as excellent legal attainments as those of the author, yet it is noteworthy that with so great a demand upon his time, he should undertake a task which required the building of a text book upon so complex a subject. The architecture is necessarily his own, for, while there are other works on interstate commerce, the condition of the law at the present time meant no small amount of original work and arrangement.

The recent acts of congress upon this important subject open up a new and ever widening field, and it may be said that the law is now in a formative period, although there are many decisions of our courts upon

this subject, of infinite variety, which are handled most admirably by the author. These cases represent the common law upon the subject. The acts of congress are said to be in addition to the common law. The Interstate Commerce Commission has made many decisions. Those selected by Mr. Judson, show a wise discrimination, for, there are a good many left out of his work, which would not pass muster as great additions to this branch of the law. The importance of the interstate commerce commission, appears in a new and larger light by the contrast which this work exhibits between the United States and State Courts decisions, and those of the commission.

The want of power exhibited in the opinions of the commission to handle fully questions brought before it, is the strongest kind of an appeal for more power and foreshadows that which is likely to be invested in it in the near future. The importance of this work lies in the fact that it appears at the entrance of a new era, in interstate commerce legislation, where the forces are being gathered and reformed and added to. The present edition will hardly have been launched on to the market before a demand for a new one will arise. While Mr. Judson has not attempted large amplification of the existing law, it seems to us he might have done so with much benefit to future judicial determinations. With his knowledge of the subject we might have looked for more suggestions on his part but, perhaps, this very knowledge discloses to him that the time is not yet ripe for them. We shall also look for much on public policy in his next edition, which he must now begin to prepare. The literary merit of this work, in our opinion, places it in the rank of the very best of recent legal productions. Its practical value is beyond question. It includes even the forms of procedure in interstate commerce matters. A subject so complex in the variety of phase and form, is put into shape with so excellent judgment, that the profession must accept it as a boon. It is what every lawyer has been looking for and should be in every law office.

It is printed in one volume of 509 pages and published by T. H. Flood & Co., Chicago, Ill.

BOOKS RECEIVED.

The Law of Interstate Commerce and its Federal Regulation. By Frederick N. Judson, of the St. Louis Bar. Chicago, T. H. Flood & Company, 1905. Sheep, pp. 500. Price, $5.00. Review will follow.

The Federal Statutes Annotated, Containing all the Laws of the United States of a General and Permanent Nature, in force on the first day of January, 1903. Compiled Under the Editorial Supervision of William M. McKinney, Editor of the Encylopedia of Pleading and Practice, and Peter Kemper, Jr. Vol. VI. Edward Thompson Company, Northport, Long Island, New York, 1905. Review will follow.

International, Civil and Commercial Law, as Founded upon Theory, Legislation, and Practice. By F. Meili, Professor of International Private Law of Zurich Delegate of Switzerland to The Hague International Conferences. Translated and Supplemented with Additions of American and English Law, by Arthur K. Kuhn, A. M., member of the New York Bar. New York, The Macmillan Company, 1905. Review will follow.

Inheritance Tax Calculations. An explanation of the Underlying Principles with Tables and Instructions for Ascertaining the Present Value of Dower and Curtesy Rights, Life Estates, Annuities, Vested and Contingent Remainders, upon the Northampton, Carlisle, American and Actuaries' Experience Tables of Mortality at Various Rates of Interest, with a Brief Analysis of the Inheritance Tax Laws of the Various States and Territories. By S. Herbert Wolfe, F. S. S., Consulting Actuary, New York City. New York. Baker, Voorhis & Company, 1905. Buckram, pp. 300. Price, $4.50. Review will follow.

HUMOR OF THE LAW.

An old darkey was under indictment for some trivia offense and was without counsel. The judge appointed a lawyer to defend him who had never tried a case in court.

As he walked forward to consult with his client the prisoner turned to the judge and said:

"Yo' Honah, am dis de lawyer what am depointed to offend me?"

"Yes."

"Well," continued the old darkey, "take hit away, jedge; I pleads guilty."

Leonard Swett, the great Chicago lawyer, once agreed to charge a retainer of $100 per day in a criminal case wherein he was successful, and the trial lasted four days, but Swett forwarded a bill for $700. The satisfied client promptly sent in his check for the amount, although he could not quite understand the size of the bill. Some few days later, lawyer and client met casually, and the client quizzed the lawyer about the size of his bill. "You worked four days at $100 per day which makes $400, and yet your bill called for $700. How do you explain that?" quizzed the client. Swett readily explained that it was "a right," for he had accepted congratulations on his big victory for three full days, which was a part of the "refresher." The client was satisfied with Swett's explanations, thinking that the ways of lawyers, like Swett are peculiar and past finding out.

A lawyer had stepped into the court room while trial was going on, and had forgotten to take off his hat.

Judge Gary as soon as he saw the lawyer with his hat on, turned to the lawyers trying the case and said in his emphatic way: "Gentlemen, stop the trial of the case and let there be silence in the court room," then turning to the bailiff: "Mr. Bailiff, close the windows and shut the door," (and pointing to the lawyer with his hat on), "that poor gentleman may take cold."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACTION—Right of Privacy.—The absence for a long period of time of a precedent for an asserted right is not conclusive evidence that doubt does not exist.—Pavelsch v. New England Life Ins. Co., Ga., 50 S. E. Rep. 68.

2. ADMIRALTY—Effect of State Laws.—Public laws in New Jersey are in force in the littoral waters of Sandy Hook peninsular below low-water mark, whether enacted before or after cession to the United States by Act of N. J., March 12, 1846, of jurisdiction over a portion of that peninsular for military purposes.—Hamburg-American S. S. Co. v. Grube, U. S. S. C., 25 Sup. Ct. Rep. 352.

3. ADVERSE POSSESSION—Disseisin by Agent.—The fact that one owning land adjoining that of another acts as agent for the latter in caring for the property does not render him legally incapable of acquiring title by adverse possession.—Carney v. Hennessey, Conn., 60 Atl. Rep. 129.

4. ADVERSE POSSESSION—Knowledge of Outstanding Title.—A subsequent purchaser may invoke title by possession adverse to an outstanding tax title, without alleging knowledge or want of knowledge of such title at the time of purchase.—Cass Farm Co. v. City of Detroit, Mich., 102 N. W. Rep. 848.

5. APPEAL AND ERROR—Costs.—Where no exception was taken to the action of the court in referring the matter of taxation of costs back to the clerk after an appeal therefrom, the question on the correctness of that ruling was not opened on appeal.—Smith v. Wenz, Mass., 73 N. E. Rep. 651.

6. APPEAL AND ERROR—Discretionary Power in Issuing Injunctions.—Discretionary power of supreme court as to injunctions held reviewable by court of appeals when a question of law is raised.—Penrhyn Slate Co. v. Granville Electric Light & Power Co., N. Y., 73 N. E. Rep. 566.

7. APPEAL AND ERROR—Excessiveness of Damages.—An objection that the verdict is excessive is not a determination or direction of the district court in point of law, which can be reviewed on appeal under the act of 1902 (P. L. 1902, p. 565).—Roth v. Slobodien, N. J., 60 Atl. Rep. 59.

8. APPEAL AND ERROR—Findings of Fact.—A finding of fact by the circuit court on appeal from a magistrate is not reviewable in the supreme court.—Loveless v. Gilliam, S. Car., 50 S. E. Rep. 9.

9. APPEAL AND ERROR—New Trial.—A ground of motion for new trial, complaining of admission of written evidence, will not be considered, unless the evidence is set forth.—Hall v. Davis, Ga., 50 S. E. Rep. 106.

10. ARMY AND NAVY—Sea Pay for Shore Duty.—Shore duty performed by naval officer under orders held not incompatible with his permanent assignment, so as to defeat his right to sea pay while so engaged.—United States v. Engard, U. S. S. C., 25 Sup. Ct. Rep. 322.

11. ASSAULT AND BATTERY—Provocation.—An assault and battery, committed after much provocation, may, nevertheless, be without legal excuse.—Roth v. Slobodien, N. J., 60 Atl. Rep. 59.

12. ATTACHMENT—Sufficiency of Officer's Return.—Failure of an officer's return to give a detailed description of all propertey attached held not to invalidate the attachment as to property specifically described.—Smith v. Wenz, Mass., 73 N. E. Rep. 651.

13. BAILMENT—Disbursement of Funds.—Whether defendants, gratuitous bailees, violated notice of bailors in cashing certain checks issued by plaintiffs' representative to reimburse himself and another for money advanced for the business, was for the jury.—Miller v. Dayton, Minn., 102 N. W. Rep. 862.

14. BAILMENT—Loss by Fire.—Where goods are stored in a warehouse specifically agreed upon, and removed to another place without notice to the bailor, and destroyed by fire, the bailee is responsible for their market value.—McCurdy v. Wallblom Furniture & Carpet Co., Minn., 102 N. W. Rep. 873.

15. BANKRUPTCY — Bankrupt's Suit for Services Rendered Prior to Bankruptcy.—Where plaintiff sues for services rendered prior to his adjudication as a bankrupt, he cannot recover therefor.—Rand v. Sage, Minn. 102 N. W. Rep. 864.

16. BANKRUPTCY—Mortgage Lien on After Acquired Property.—Trustee in bankruptcy held to have no greater rights against bankrupt's chattel mortgagee, taking possession of after-acquired property under the mortgage, because of an attachment and second chattel mortgage, both dissolved by the bankruptcy proceedings.—Thompson v. Fairbanks, U. S. S. C., 25 Sup. Ct. Rep. 306.

17. BANKRUPTCY — Preferences. — Under Bankr. Act 1898, ch. 541, § 60, pars. "a," "b," it is not enough to constitute a voidable preference that the creditor suspected that a transfer was intended, but he must have had reasonable cause to so believe.—Johnston v. George D. Witt Shoe Co., Va., 50 S. E. Rep. 153.

18. BANKS AND BANKING—Agent for Collection.—True owners of a draft may revoke the bank's authority to collect the same, and the bank's refusal to return the draft on demand will constitute a conversion.—Bank of America v. Waydell, 92 N. Y. Supp. 666.

19. BIGAMY—Instructions.—Where, on trial for bigamy, the evidence did not oblige the jury to believe that the first marriage took place in Florida, refusal to instruct that it must appear that the marriage was in accordance with the law of that state was proper.—Murphy v. State, Ga., 50 S. E. Rep. 48.

20. BILLS AND NOTES—Action by Holder of Note as Collateral.—One suing on a note held as collateral may in his complaint set forth such facts as disclose his right *prima facie* to recover the amount of the note.—Mersick v. Alderman, Conn., 60 Atl. Rep. 109.

21. BILLS AND NOTES—Consideration.—A note given by a corporation on the purchase of its own stock held not without consideration.—Leonard v. Draper, Mass., 73 N. E. Rep. 644.

22. BILLS AND NOTES—Payment by Indorsers.—Indorsers on note held not liable for costs of creditors' suit brought by the payee against the maker.—Jefferson County Nat. Bank v. Garvey, N. Y., 73 N. E. Rep. 569.

23. BRIDGES—Failure to Maintain.—Where the legislature appoints a commission to remove a bridge between two cities, which is a part of a public highway and which the cities have neglected to maintain, it may impose the burden of the cost of such work upon such cities.—*In re* Opinion of the Justices, Me., 60 Atl. Rep. 85

24. BROKERS—Inconsistent Positions.—Agreement by real estate broker with another, authorizing the latter to sell the property, and promising to divide the profits held not inconsistent with his duties towards his principal.—Madler v. Pozorski, Wis., 102 N. W. Rep. 892.

25. BROKERS—Insurance Contracts.—Right of action for breach by principal of insurance brokerage contract held not to accrue until payment of the commissions was due and refused.—Tanenbaum v. Federal Match Co., 92 N. Y. Supp. 685.

26. BUILDING AND LOAN ASSOCIATIONS—Insolvency.—In winding up of insolvent building and loan association, particular class of membership held not entitled to preference in distribution of its assets.—People v. Metropolitan Mut. Savings & Loan Assn., 92 N. Y. Supp. 689

27. BURGLARY—Consent to Crime.—If a burglary is committed by the person charged as to every element thereof, he may be found guilty, notwithstanding the complicity of a detective.—State v. Currie, N. Dak., 102 N. W. Rep. 875.

28. BURGLARY—Possession of Stolen Property.—Where a burglary has been committed, and property from the house is soon thereafter found in the possession of a person who is unable to account for it, it raises a presumption of guilt.—Scott v. State, Ga., 50 S. E. Rep. 49.

29. CARRIERS—Fruit Spoiled for Lack of Ice.—A carrier held to have a right to assume that the shipper had put sufficient ice into a refrigerator car to keep it cool until delivery could be had in the ordinary course of business.—Chicago, I. & L. Ry. Co. v. Reyman, Ind., 73 N. E. Rep. 587.

30. CARRIERS—Place of Delivery.—A consignment of freight held not delivered until the consignee has been notified and the car placed where it can be conveniently unloaded.—Bachant v. Boston & M. R. R., Mass., 73 N. E. Rep. 642.

31. CARRIERS—Right to Demand Additional Freight.—Where a shipper falsely represents to a carrier the character of the goods to be shipped, the carrier held entitled, on discovering the facts, to charge the higher rate the goods are subject to.—Illinois Cent. R. Co. v. Seitz, Ill., 73 N. E. Rep. 585.

32. CARRIERS—Unissued Stock.—Where a corporation repurchases stock issued by it, and resells it, it cannot be regarded as unissued stock.—Hartley v. Pioneer Iron Works, N. Y., 73 N. E. Rep. 576.

33. COMMERCE—Intoxicating Liquors.—Comp. Laws 1897, § 4018, imposing a tax on nonresidents shipping liquor into the state for sale at wholesale to residents, held unconstitutional.—Sloman v. William D. C. Moebs Co., Mich., 102 N. W. Rep. 854.

34. COMMERCE—Sales in Original Packages.—The protection of the interstate commerce clause of the federal constitution extends to commerce conducted by corporations, as well as individuals.—Greek-American Sponge Co. v. Richardson Drug Co., Wis., 102 N. W. Rep. 888.

35. CONSTITUTIONAL LAW—Compulsory Vaccination Law.—An adult held not deprived of liberty secured by Const. U. S. Amend. 14, by enforcement against him of a compulsory vaccination law.—Jacobson v. Commonwealth of Massachusetts, U. S. S. C., 25 Sup. Ct. Rep. 358.

36. CONSTITUTIONAL LAW—Impairment of Contract.—Municipal corporation cannot invoke protection of contract clause of federal constitution against abrogation by Laws Mass. 1898, ch. 578, with consent of street railway company, of provisions of contract between that company and the municipality as to paving streets.—City of Worcester v. Worcester Consol. St. Ry. Co., U. S. S. C., 25 Sup. Ct. Rep. 327.

37. CONSTITUTIONAL LAW—Interpretation.—Constitutional limitations, imposed for the protection of the people, against certain acts of government, are remedial, and to be so construed as to afford the protection contemplated.—*In re* Opinion of the Justices, Me., 60 Atl. Rep. 85.

38. CONSTITUTIONAL LAW—Maintenance of Insane Persons.—Existence of statutory right of one county to recover from another for maintenance of indigent insane persons held not a vested right, so that a repeal of the statute under which recovery had been had ended the liability.—Jefferson County v. Oswego County, 92 N. Y. Supp. 709.

39. CONSTITUTIONAL LAW—Power of Legislature to Expend Public Money.—There is nothing in the constitution to prohibit the legislature from attending a patriotic celebration in another state in a body, and to provide that the expense of their meals when attending such celebration shall be paid out of public funds.—Russ v. Commonwealth, Pa., 60 Atl. Rep. 169.

40. CONSTITUTIONAL LAW—State Taxation of Foreign Corporation.—Due process of law is not denied a foreign insurance company by distraining its personal property under authority of Rev. St. Ohio, § 1095, to satisfy personal taxes.—Scottish Union & National Ins. Co. v. Bowland, U. S. S. C., 25 Sup. Ct. Rep. 345.

41. CONSTITUTIONAL LAW—Taxing Local Managers of Foreign Packing House.—Equal protection of laws held not denied managing agent of nonresident meat packing house by imposition of license tax under Act Ga., Dec. 21, 1900.—Kehrer v. Stewart, U. S. S. C., 25 Sup. Ct. Rep. 403.

42. CONTRACTS—Installation of Heating Apparatus.—A contract to install in a house, "in a good and workmanlike manner," radiation for steam heating, held to require it to work.—Ideal Heating Co. v. Kramer, Iowa, 102 N. W. Rep. 840.

43. CONTRACTS—Limiting Carrier's Common Law Liability.—Contract limiting carrier's liability for damages to cattle and for injury to caretaker held divisible as to the cattle and the caretaker.—Sprigg's Admr. v. Rutland R. Co., Vt., 60 Atl. Rep. 143.

44. CORPORATIONS—Bankruptcy.—Corporate creditor held not entitled to set off, in proving claim against bankrupt's estate, sum retained by it due the bankrupt with knowledge of debtor's insolvency.—Western Tie & Timber Co. v. Brown, U. S. S. C., 25 Sup. Ct. Rep. 339.

45. CORPORATIONS—Stockholder's Liability.—*Bona fide* transferee of stock purporting to be fully paid held not bound to make good to creditors the contract of the original subscribers to pay the stock in full.—Easton Nat. Bank v. American Brick & Tile Co., N. J., 60 Atl. Rep. 54.

46. CORPORATIONS—Validity of Texas Anti-Trust Law.—Property of a foreign corporation manufacturing products of cotton seed is not taken without due process of law by the Texas anti-trust act, on forfeiture of its license to do business for violating those laws.—National Cotton Oil Co. v. State of Texas, U. S. S. C., 25 Sup. Ct. Rep. 379.

47. COSTS—"Double Costs" Construed.—"Double costs" held to mean twice the amount of ordinary costs.—Hopper v. Smith, N. J., 60 Atl. Rep. 63.

48. COUNTIES—Power of Commissioners' Court.—The commissioners' courts have limited powers, and only such jurisdiction as is expressly conferred by statute, or necessarily implied to enable them to carry out the powers expressly granted.—Kemp v. Adams, Ind., 73 N. E. Rep. 590.

49. CRIMINAL EVIDENCE—Murder.—Where the evidence shows a homicide committed without extenuating circumstances, it was not material error to charge that, if accused did the killing, the law presumed it was done with malice.—Anderson v. State, Ga., 50 S. E. Rep. 51.

50. CRIMINAL LAW—Modification of Excessive Sentence.—Where a sentence is excessive, but not void, the supreme court, under Rev. Codes 1899, § 8350, may modify it.—State v. Wisnewski, N. Dak., 102 N. W. Rep. 883.

51. CRIMINAL LAW—Previous Conviction for Unlawful Sale of Intoxicating Liquors.—A conviction under a city

ordinance of keeping intoxicating liquors for sale on one day is no bar to a conviction for keeping the same liquors for the same purpose on a subsequent day.—Tucker v. City of Moultrie, Ga., 50 S. E. Rep. 61.

52. CRIMINAL TRIAL—Accomplice as a Witness fo State.—Where, in a prosecution for cattle theft, the statr introduced an accomplice, who was a confessed perjurer, as a witness, it was error to refuse to instruct with reference to such evidence, and to require corroboration thereof in order to convict.—State v. Pearson, Wash., 79 Pac. Rep. 985.

53. CRIMINAL TRIAL—Attempt to Commit Abortion.—It s no defense to a prosecution for an attempt to commit abortion that defendant was trapped by agreement between the woman and the officers.—People v. Conrad, 92 N. Y. Supp. 606.

54. CRIMINAL TRIAL—Confession of Guilt.—Where the statement of accused was a confession of guilt, there was no error in overruling a motion for a new trial.—Johnson v. State, Ga., 50 S. E. Rep. 65.

55. CRIMINAL TRIAL—Jury the Judge of Facts Proved.—In a criminal case, the jury are the exclusive judges of the facts proved and of all inferences to be drawn therefrom, and the supreme court cannot weigh the evidence —Osburn v. State, Ind., 73 N. E. Rep. 601.

56. DEEDS—Indorsements Thereon After Delivery.—There is no presumption that after delivery of a deed the grantor had access thereto or could make indorsements thereon.—McBrayer v. Walker, Ga., 50 S. E. Rep. 9 .

57. DEEDS—Power of Sale.—A warranty deed to P, "vice-president" of a bank named, conveys title to P individually.—Greenfield v. Staut, Ga., 50 S. E. Rep. 111.

58. DEEDS—Undue Influence.—A deed cannot be set aside by the court on the ground of undue influence where the complaint alleges only fraud as a ground of relief, and is not amended.—Absalon v. Sickinger, 92 N. Y. Supp. 601.

59. DESCENT AND DISTRIBUTION—Consent Division of Estate.—Where a consent division of an estate has been made, each heir, without deed or further conveyance, a cquires a perfect equity in the property set apart to him.—Williams v. J. P. Williams Co., Ga., 50 S. E. Rep. 52.

60. DIVORCE—Separation from Bed and Board —Permanent separation from bed and board awarded the wife on the ground of extreme cruelty and abandonment by her husband.—Costell v. Costell, N. J., 60 Atl. Rep. 49

61. DIVORCE—Service of Summons.—It is immaterial that the officer making the service of summons certifies that the name by which the defendant was described in the papers served was an *alias*.—Sodini v. Sodini, Minn., 102 N. W. Rep. 861.

62. EASEMENTS—Reservation.—Where one who platted land reserved title to the fee of a strip along an avenue, and afterwards conveyed a portion of such sfrip to another, subsequent purchasers of lots abutting on the avenue acquired no easement over the portion so conveyed.—Lever v. Grant, Mich., 102 N. W. Rep. 848.

63. ELECTIONS—Effect of Vote Cast after Closing Poll.—That one vote was cast after the time fixed for closing the polls is no ground for excluding the entire vote of the precinct.—Gilliam v. Green, Ga., 50 S. E. Rep. 137.

64. EQUITY—Continuing Nuisance.—Equity held not without jurisdiction to restrain a nuisance consisting of the standing of trains at a street intersection.—J. K. & W. H. Gilcrest Co. v. City of Des Moines, Iowa, 102 N. W. Rep. 831.

65. EQUITY—Rehearing Case.—Where an application to open the decree and for rehearing is also for leave to present additional testimony, it must be shown that such testimony is newly discovered, and will probably induce the court to change the decree.—Richardson v. Hatch, N. J., 60 Atl. Rep. 52.

66. ESCAPE—Payment of Fine.—Where the sentence is in the alternative, it is no defense to a prosecution for escape, that the convict, several months thereafter, paid his fine.—Johnson v. State, Ga., 50 S. E. Rep. 65.

67. ESTOPPEL—Agreement Not to Engage in Similar Business.—Agreement by limited partnership association, on sale of its business, not to engage in a similar business, construed, and held to bind the chairman of the partnership individually.—Pittsburg Valve, Foundry & Construction Co. v. Klingelhofer, Pa., 60 Atl. Rep. 161.

68. ESTOPPEL—Non-Delivery by Carrier.—A carrier, refusing to deliver goods because additional freight was not paid, held not entitled to justify the refusal on the ground that the bill of lading had not been assigned to the owner.—Illinois Cent. R. Co. v. Seitz, Ill., 73 N. E. Rep. 585.

69. EVIDENCE—Admission of Negligence by Agent.—Statements of a carrier's station agent, admitting liability for an accident, are not admissible against the carrier, not having been made in the performance of his duty.—Bachant v. Boston & M. R. R., Mass., 73 N. E. Rep. 642.

70. EVIDENCE—Books of Original Entry.—In an action on an account a book kept by plaintiff's clerk held inadmissible to prove items of which the clerk's only knowledge was derived from slips brought to his office by other employees.—Gould v. Hartley, Mass., 73 N. E. Rep. 656.

71. EVIDENCE—Date of Delivery of Life Policy.—A life insurance policy, dated in December, may be shown not to have been delivered until the following February.—Haughton v. Etna Life Ins. Co., Ind., 73 N. E. Rep. 592.

72. EXECUTORS AND ADMINISTRATORS—Assignment of Legacy.—Notice to trustee of assignment of legacy held to impose on trustee the duty of ascertaining the facts and making the alleged assignee a party to accounting.—Seger v. Farmers' Loan & Trust Co., 92 N. Y. Supp. 629.

73. EXECUTORS AND ADMINISTRATORS—Contempt.—An order in supplementary proceedings providing for defendant's commitment unless he paid a fine, together with sheriff's fees, held erroneous, in so far as it provided for commitment for non-payment of the fees.—Maigille v. Leonard, 92 N. Y. Supp. 656.

74. EXECUTORS AND ADMINISTRATORS—Requisites to Title under Administrator's Deed.—Where plaintiff in an action to recover land claims title under an administrator's deed, she must show an order granting leave to the administrator to sell the land.—Hall v. Davis, Ga., 50 S. E. Rep 106.

75. FEDERAL COURTS—Amount in Dispute.—Value of matter in dispute, in suit to set aside judgment of probate court as fraudulently obtained, is the aggregate amount of claims whose allowance was procured in furtherance of an unlawful combination.—McDaniel v. Traylor, U. S. S. C., 25 Sup. Ct. Rep. 369.

76. FEDERAL COURTS—Diversity of Citizenship —Presumption that stockholders of corporation are citizens of the state which created it held not to preclude them from asserting their actual citizenship to sustain jurisdiction in federal court to suit by them as stockholders.—Doctor v. Harrington, U. S. S. C., 25 Sup. Ct. Rep. 355.

77. FIRE INSURANCE—Liability of Agent.—An insurance agent held not liable to insured for failure to return premium on cancellation of the policy, in the absence of evidence that he acted negligently or fraudulently.—Marrian v. Robbins, 92 N. Y. Supp. 654.

78. FISH—Police Regulations:—Laws 1901, p. 518, ch. 358, § 23, relative to the shipment of fish taken from inland waters of the state, held to have no application to a shipment from a point upon the outlying waters of the state.—State v. Nergaard, Wis., 102 N. W. Rep. 899.

79. FIXTURES—Replevin.—Replevin will lie to recover a building, where it was the intention of the parties to regard it as personalty when it was placed on the land.—Adams v. Tully, Ind., 73 N. E. Rep. 595.

80. FRAUD—Evidence of Similar Representations.—In an action for procuring the sale of goods by fraudulent representations, evidence as to the making of similar representations to other parties held inadmissible.—Edward Malley Co. v. Button, Conn., 60 Atl. Rep. 125.

81. GUARDIAN AND WARD—Qualification of Guardian.—On an issue as to the propriety of appointing petitioner guardian of certain minors, the exclusion of evidence as to the career of one of petitioner's daughters held not error.—Russner v. McMillan, Wash., 79 Pac. Rep. 488.

82. HAWKERS AND PEDDLERS—City License.—The grant by the ordinary of the county, under Pol. Code 1895, § 1649, of a free license to peddle, does not relieve peddler from the necessity of obtaining a license from the city of Atlanta.—Justice v. City of Atlanta, Ga., 50 S. E. Rep. 61.

83. HOMICIDE—Degrees of Offense.—A killing in a combat which engenders hot blood is not murder in the first degree, in the absence of premeditation.—Osburn v. State, Ind., 73 N. E. Rep. 601.

84. HOMICIDE—Persons Engaged in an Affray.—Where persons are engaged in an affray, and one of the parties is killed, a defendant cannot escape on the ground that he did not kill him, if he brought on the difficulty.—State v. Gaylord, S. Car., 50 S. E. Rep. 20.

85. HUSBAND AND WIFE—Bank Account in Joint Names.—Where deposit in bank stands in name of husband and wife, on death of either, the survivor takes the whole.—*In re* Klenke's Estate, Pa., 60 Atl. Rep. 166.

86. HUSBAND AND WIFE—Bond of Married Woman.—In an action on a bond given by a married woman to secure a judgment against her husband, instruction held not erroneous, in that it failed to instruct that defendant was bound by the recitals in the bond and was estopped to deny them.—Atlanta Suburban Land Corp. v. Austin, Ga., 50 S. E. Rep. 184.

87. INDICTMENT AND INFORMATION—Wife as Witness before Grand Jury.—The fact that the wife of the accused was used by the state as a witness before the grand jury, and her name indorsed on the back of the indictment, was no ground for setting it aside.—State v. Brown, Iowa, 102 N. W. Rep. 799.

88. INJUNCTION—Adequate Remedy at Law.—Equity will not enjoin prosecution of civil suits against foreign corporations to recover taxes on personal property on the ground that the corporation is not personally liable.—Scottish Union & National Ins. Co. v. Bowland, U. S. S. C., 25 Sup. Ct. Rep. 345.

89. INJUNCTION — City Lighting Contract.— Where nothing was shown to support a prayer of a petition that a city should be enjoined from making any contract whatsoever for electric lights, an injunction was properly refused.—McMaster v. City of Waynesboro, Ga., 50 S. E. Rep. 122.

90. INJUNCTION—Village Marshal.—Where the village marshal is permitted to spend a portion of his time in selling articles of a merchant in the village, the village may be restrained from paying him for his services.—Nerlien v. Village of Brooten, Minn., 102 N. W. Rep. 867.

91. INTEREST—Contractor's Claim for Extras.—A contractor's demand for extras does not draw interest until judgment.—Stimson v. Dunham, Carrigan, Hayden Co., Cal., 79 Pac. Rep. 968.

92. INTEREST—Where Money Received Through Fraud.—Where a party receives the money of another by his own fraud, he is chargeable with interest thereon from the time he obtains it.—I. L. Corse & Co. v. Minnesota Grain Co., Minn., 102 N. W. Rep. 728.

93. JOINT ADVENTURES—Breach of Contract.—The fact that defendants' title to certain machinery was defective is no defense to an action for breach of plaintiff's contract to enter into a joint enterprise with defendants.—Alderton v. Williams, Mich., 102 N. W. Rep. 753.

94. JUDGMENT—Motion to Vacate by Stranger to Action.—After judgment in an action against a county to annul tax certificates, the owner of a portion of the certificates, not a party to the action nor seeking to be made such, has no standing to move for an order to show cause why the judgment should not be vacated.—Pier v. Oneida County, Wis., 102 N. W. Rep. 912.

95. JUDGMENT—Presumption as to Jurisdiction.—Where a certificate to a judgment of a court of a sister state shows that the court is one of record, it will be presumed that the court had jurisdiction of subject-matter and parties.—Woodworth v. McKee, Iowa, 102 N. W. Rep. 777.

96. JUDGMENT—Res Judicata.—Where a judgment is pleaded as an estoppel, the burden is on the party relying on it to show that the particular matter in controversy was necessarily or actually determined by the former litigation.—Draper v. Medlock, Ga., 50 S. E. Rep. 113.

97. JUDGMENT—Revival.—The five years' lapse of time from the rendition of a judgment to the time that a judgment becomes dormant only raises presumption of payment and does not deprive the judgment of all vitality.—Fuirer v. Holmes, Neb., 102 N. W. Rep. 764.

98. JUSTICES OF THE PEACE—Decision as Against the Weight of Evidence.—A justice's judgment is not reversible by the county court, as against the weight of the evidence, unless it can be seen that the justice could not reasonably have arrived at the decision.—Brewer v. Califf, 92 N. Y. Supp. 627.

99. JUSTICES OF THE PEACE—Granting Nonsuit After Judgment.—Where a justice renders a judgment for plaintiff, he cannot, on the trial of an appeal to the jury, grant a nonsuit.—Georgia Ry. & Electric Co. v. Knight, Ga., 50 S. E. Rep. 124.

100. JUSTICES OF THE PEACE—Plea to Jurisdiction.—A plea in a justice court in F county, alleging that defendant resides in I county, is not good, in failing to show what county has the jurisdiction, as required by Civil Code 1895, § 5082.—Akers v. J. M. High Co., Ga., 50 S. E. Rep. 105.

101. LANDLORD AND TENANT—Distress Warrant.—A distress warrant, based on an affidavit by A, as agent of B, that C is indebted to him for rent, on which a warrant is issued in favor of A, as agent of B, is a proceeding by A, and not by B.—Stephens v. Hooks, Ga., 50 S. E. Rep. 119.

102. LANDLORD AND TENANT—Lease of Farm on Shares.—A landlord is entitled to possession of a crop raised on shares until division is made.—Loveless v. Gilliam, S. Car., 50 S. E. Rep. 9.

103. LANDLORD AND TENANT—What Constitutes Surrender of Lease.—A lessee's surrender of the key to the leased building, to enable one of the lessors to protect the contents of the building while the lessee was in jail, held not to constitute a surrender of the lessee's possession.—Schwartz v. McQuaid, Ill., 73 N. E. Rep. 582.

104. LIBEL AND SLANDER—Liberty of the Press.—A publication which imputes to one language which is known to those among whom he lives to contain statements which are false is libelous.—Pavesich v. New England Life Ins. Co., Ga., 50 S. E. Rep. 68.

105. LIFE INSURANCE—Proofs of Death.—In an action on a life insurance policy, proofs of death furnished by the beneficiary are admissible in evidence against her.—Haughton v. Ætna Life Ins. Co., Ind., 73 N. E. Rep. 592.

106. LOTTERIES—Police Power.—Rev. Laws, ch. 73, § 7, forbidding issuance of obligations redeemable in numerical or arbitrary order, and section 8, declaring a violation thereof operative as a forfeiture of a domestic corporation's franchise, held a valid exercise of police power.—Attorney General v. Preferred Mercantile Co. of Boston, Mass., 73 N. E. Rep. 669.

107. MANDAMUS—To Cancel Dentist's Registration.—Mandamus will not lie to require a county clerk to cancel the registration of a dentist, entered by his predecessor in office, on the ground that it was procured on an insufficient license and affidavit, under Laws 1895, p. 418, ch. 626.—State v. Jacobs, 92 N. Y. Supp. 590.

108. MANDAMUS—To Include Vote.—Where the vote of a precinct was illegally excluded, but, if counted, the result would not be changed, mandamus will not issue to require the superintendents to include the vote of the precinct.—Gilliam v. Greene, Ga., 50 S. E. Rep. 137.

109. MARRIAGE—Impotency.—Where a wife brings suit for the annulment of the marriage on the ground of the impotency of the husband, the court has, as an incident of its jurisdiction of such actions, the power to require the husband to pay her counsel fees *pendente lite*.—Gore v. Gore, 92 N. Y. Supp. 634.

110. MASTER AND SERVANT—Assumed Risk.—A sawmill operative, injured while cleaning sawdust from beneath weights used to adjust a band saw, while in motion, held to have assumed the risk.—Beltz v. American Mill Co., Wash., 79 Pac. Rep. 981.

111. MASTER AND SERVANT—Discharge.—An employee owes his employer respectful obedience, and insubordination is a sufficient ground for his discharge.—Parker v. Farlinger, Ga., 50 S. E. Rep. 98.

112. MASTER AND SERVANT—Duty to Inspect Derrick.—A master furnishing a derrick held bound to make reasonable inspection and repair of the same.—Rincicotti v. John J. O'Brien Contracting Co., Conn., 60 Atl. Rep. 115.

113. MASTER AND SERVANT—Duty to Warn.—An employer is not negligent in failng to warn an employee of a danger of which the employee already knows.—Nye v. Dutton, Mass., 73 N. E. Rep. 654.

114. MASTER AND SERVANT—Injury to Patron of Amusement Association.—Where a person occupying a paid seat in a grand stand was injured by a beer bottle falling from an elevated band stand, held that, if the bottle fell by reason of the carelessness of the musicians, defendant was not liable.—Williams v. National City Park Ass'n, Iowa, 102 N. W. Rep. 783.

115. MASTER AND SERVANT—Tort of Servant Outside Scope of Duty.—Proprietor of a store held not liable for the act of a floor walker in attempting to extort money from a customer by a false pretense that she had stolen goods.—Cobb v. Simon, Wis., 102 N. W. Rep. 891.

116. MECHANICS' LIENS — Change of Ownership of Property.—A change of ownership of real estate while improvements thereon are in progress does not defeat the right to a mechanics' lien.—D. L. Billings Co. v. Brand, Mass., 73 N. E. Rep. 637.

117. MORTGAGES—Power of Sale.—Where a deed to a vice-president of a bank individually recites that it is given as security for a debt and contains a power of sale, that power cannot be exercised by the cashier of the bank —Greenfield v. Stout, Ga., 50 S. E. Rep. 111.

118. MORTGAGES — Rights of Judgment Creditor. — A creditor, whose judgment is inferior to a mortgage, cannot by an execution subject property held by the mortgagee under a tite voidable because purchased at his own sale under a power.—Williams v. J. P. Williams Co., Ga., 50 S. E. Rep. 52.

119. MORTGAGES—Writ of Assistance.—A writ of assistance will go to put into possession a purchaser at foreclosure sale, or any one who by the decree becomes entitled to the possession of the land.—Strong v. Smith, N. J., 60 Atl. Rep. 66.

120. MUNICIPAL CORPORATIONS—Assessment for Street Retaining Wall.—Cost of retaining wall necessarily built on the widening of a street may be assessed against the neighboring property owners.—*In re* Perrysville Ave., Pa., 60 Atl. Rep. 160.

121. MUNICIPAL CORPORATIONS—Court's Interference in City's Business Affairs.—The courts will not interfere with the business affairs of a city, except in a clear case of mismanagement or fraud. — McMaster v. City of Waynesboro, Ga., 50 S. E. Rep. 122.

122. MUNICIPAL CORPORATIONS—Damages for Change of Grade.—Change in grade of highway held to constitute ordinary repairs, within the power of the selectmen to make, and for which the property owner could maintain a petition against the town for damages.—Garvey v. Town of Revere, Mass., 73 N. E. Rep. 664.

123. MUNICIPAL CORPORATIONS—Damages for Change in Street Grade.—In the absence of statutory provisions therefor, damages suffered by an adjacent property owner because of a change in the grade of a street cannot be recovered.—Cummings v. Dixon, Mich., 102 N. W. Rep. 751.

124. MUNICIPAL CORPORATIONS—Icy Sidewalks.—City held not entitled to avoid liability for injuries received on sidewalk by showing that iciness thereof was caused by natural causes.—Templin v. Incorporated City of Boone, Iowa, 102 N. W. Rep. 789.

125. MUNICIPAL CORPORATIONS — Indebtedness. — The legislature cannot authorize a city to increase its debt beyond the constitutional limit, nor compel it to become indebted beyond such limit, even to meet the costs of a public improvement.—*In re* Opinion of the Justices, Me. 60 Atl. Rep. 85.

126. MUNICIPAL CORPORATIONS—Injury to Person on Street.—Where a laborer unnecessarily places his foot between the wheel of a push cart, in which are his tools, and the curb, and the push cart is struck by a passing wagon, an instruction as to contributory negligence should be given.—Richardson v. Henry F. Davis & Co., Minn., 102 N. W. Rep. 868.

127. MUNICIPAL CORPORATIONS—Liability of City Marshal for Wrongful Levy.—City marshal held liable on his bond for a levy on the goods of one person under an execution or other process against the goods of another person —Frankenstein v. Cummisky, 92 N. Y. Supp. 798.

128. MUNICIPAL CORPORATIONS—Maintenance of Insane Persons.—Payments authorized by county board of supervisors for care of resident insane person held not such an admission of liability as affected the right of the county to discontinue the payments.—Jefferson County v. Oswego County, 92 N. Y. Supp. 709.

129. MUNICIPAL CORPORATIONS—Public Improvements. —A village held not entitled to the benefit of payment of invalid orders drawn by a contractor, as against materialmen entitled to a lien on the fund for materials furnished.—Rockland Lake Trap Rock Co. v. Village of Port Chester, 92 N. Y. Supp. 631.

130. MUNICIPAL CORPORATIONS—Revocation of License to Use Street.—A reservation by a city of the right to revoke a license to encroach on a street may be enforced, though the licensee may suffer loss.—Forbes v. City of Detroit, Mich., 102 N. W. Rep. 740.

131. NEGLIGENCE—Articles Falling from Band Stand on Spectator.—Failure of an amusement association to inclose an elevated band stand, so as to prevent articles from falling on spectators, held not negligence as a matter of law.—Williams v. National City Park Ass'n, Iowa, 102 N. W. Rep. 783.

132. NEGLIGENCE—Necessity of Proving Specific Acts. —Plaintiff, suing to recover for personal injuries, must prove the specific acts of negligence with which defendant is charged.—Tucker v. Central of Georgia Ry. Co. Ga., 50 S. E. Rep. 128.

133 NEGLIGENCE—Proximate Cause.— Where several efficient proximate causes contribute to an accident, without the operation of which it could not have happened, it may be attributed to all or any one.—Burk v. Creamery Package Mfg. Co., Iowa, 102 N. W. Rep. 798.

134. NEGLIGENCE—Standard of Conduct of Expert.—Even an expert may be guilty of negligence in doing what at the time his judgment approves.—Oceanic Steam Nav. Co. v. Aitken, U. S. S. C., 25 Sup. Ct. Rep. 317.

135. PARTIES — Joining Defendants in Libel Suit. — Where a petition contains a count for libel and a count for a violation of the right of privacy, and the allegations show that the three persons made defendants were joint wrongdoers, they were not improperly joined.—Pavesich v. New England Life Ins. Co., Ga., 50 S. E. Rep. 68.

136. PARTNERSHIP — Action for Accounting and Dissolution.—In an action for dissolution of a partnership and an accounting, in which the complainant stated no cause of action, evidence held not to entitle plaintiff to a judgment, had the complaint been amended to conform to the proof.—Emrich v. Goldstein, 92 N. Y. Supp. 680.

137. PARTNERSHIP — Failure of Petition to Disclose Plaintiff's Name.—Where an action was begun in the

name of a nonexistent partnership, the individual trading as the partnership could not be introduced as plaintiff by amendment.—Voight Brewing Co. v. Pacifico Mich., 102 N. W. Rep. 739.

138. PERJURY—What Constitutes.—On a prosecution for perjury for false swearing in a cause, the fact sworn to need not be material to the main issue; but it is perjury if the matter sworn to is in any way conducive to the point in issue, though it be circumstantial.—State v. Brown, Iowa, 102 N. W. Rep. 799.

139. PLEADING—Money Had and Received.—Where a petition is for money had and received, the answer pleads payment by check, and the reply disputes the payment, it is not inconsistent with the petition.—Patterson v. First Nat. Bank, Neb., 102 N. W. Rep. 765.

140. PLEDGES—Duty to Realize on Securities.—Written agreement, whereby a mortgage and certain policies of insurance were assigned as collateral, construed, and held, that plaintiffs could not sue on the debt without first attempting to realize on the collateral.—Klee v. Trauerman, Pa., 60 Atl. Rep. 157.

141. POISONS—Sale of, Without Proper Label.—Selling or delivering of a poisonous liquor without the label required by Code, §§ 2593, 4976, held negligence *per se*.—Burk v. Creamery Package Mfg. Co., Iowa, 102 N. W. Rep. 793.

142. PRINCIPAL AND AGENT—Authority of Agent.—The failure of agents to report to their principals in accordance with the terms of their authority does not relieve the principals from liability on a contract made by their agents.—Galvano Type Engraving Co. v. Jackson, Conn., 60 Atl. Rep. 127.

143. PRINCIPAL AND AGENT—Existence of Agency.—Resolution of committee authorizing individuals to arrange for certain work held not conclusive on the scope or creation of the agency of such individuals, which was to be determined by all the facts of the case.—Galvano Type Engraving Co. v. Jackson, Conn., 60 Atl. Rep. 127.

144. PRINCIPAL AND AGENT—Mortgage Note.—Failure of a mortgagor to object to a transfer of the mortgage by the mortgagee, who had failed to advance the money to be secured, held not to clothe the mortgagor's agent with authority to use the mortgage and note for a different purpose.—Keegan v. Rock, Iowa, 102 N. W. Rep. 805.

145. PRINCIPAL AND AGENT—Notice of Agent's Fraud.—Where an agent is guilty of an independent fraud for his own benefit, the principal is not charged with notice of his misconduct.—Pursley v. Stahley, Ga., 50 S. E. Rep. 139.

146. PRINCIPAL AND SURETY—Bond of Cashier.—A surety on a cashier's bond held not liable for defalcations of the cashier during years subsequent to the first year of his election.—Ida County Sav. Bank v. Seidensticker, Iowa, 102 N. W. Rep. 821.

147. PRIVATE ROADS—Obstruction.—Those using a private way cannot take advantage of their failure to repair by turning out to avoid obstructions which they should have removed, as provided by Pol. Code 1895, § 679.—Kirkland v. Pitman, Ga., 50 S. E. Rep. 117.

148. RAILROADS—Constructing Roads Over Private Ways.—The county court has no control over private ways, and its grant of authority to a railroad to grade public roads in the construction of its line gives the railroad no authority to grade private ways.—Restetsky v. Delmar Ave. & C. R. Co., Mo., 85 S. W. Rep. 665.

149. RAILROADS—Construction of Crossing.—Railroad must restore the crossing of a highway, disturbed by the construction of its line.—St. Louis Southwestern Ry. Co. of Texas v. Johnson, Tex., 85 S. W. Rep. 476.

150. RAILROADS—Duty to Look and Listen.—One approaching a railroad crossing, who either did not look or attempted to cross ahead of an approaching locomotive, held guilty of contributory negligence in law.—Woolf v. Washington Ry. & Nav. Co., Wash., 79 Pac. Rep. 997.

151. RAILROADS—Injury to Laborer Sitting on Track.—One of a gang of men unloading for a contractor gravel from cars hauled by defendant, who at noon sat on a tie, back to a car, which was moved by the switch crew, injuring him held not a trespasser.—Texas & N. O. R. Co v. McDonald, Tex., 85 S. W. Rep. 493.

152. RAILROADS—Liability for Willful Act of Servant.—Railroad company held not liable for wrongful and willful act of its servant, in charge of a locomotive, in permitting it to run down on a person without warning.—Greene v. New York, O. & W. Ry. Co., 92 N. Y. Supp. 424

153. RAILROADS—Motives for Sale of Switch.—The motives of a railroad in selling a terminal switch to the proprietor of the land over which it is laid do not affect the validity of its action.—Oman v. Bedford-Bowling Green Stone Co., U. S. C. C. of App., Sixth Circuit, 134 Fed. Rep. 64.

154. RAILROADS—Safe Place to Unload.—A person receiving from a carrier a consignment of grain has a right to rely on the statement of the carrier's station agent that the place where the grain is to be unloaded is safe—Bachant v. Boston & M. R. R., Mass., 73 N. E. Rep. 642

155. REFERENCE—Exceptions.—Where an exception of law to an auditor's report is improperly classified as an exception of fact, a motion to dismiss the exception held properly sustained.—Tippin v. Perry, Ga., 50 S. E. Rep. 35.

156. REFORMATION OF INSTRUMENTS—Laches.—Equity will not reform deeds running to a complainant unable to read or write, and to another, so as to make the former sole grantee as to a part of the land, when the mistake alleged to exist is not clearly shown, and complainant has been guilty of laches.—Fritz v. Fritz, Minn., 102 N W. Rep. 705.

157. REFORMATION OF INSTRUMENTS—Provision in Lease as to Improvements.—Where plaintiff took advantage of defendant, and omitted from a lease provisions as to defendant's right to remove improvements, a court of equity will reform the lease.—Daly v. Simonson, Iowa, 102 N. W. Rep. 780.

158. RELIGIOUS SOCIETIES—Pastor Not an Officer to Bind.—The pastor of a church is not an officer of the church corporation in such a way as to bind it by his acts Allen v. North Des Moines Methodist Episcopal Church Iowa, 102 N. W. Rep. 808.

159. REMOVAL OF CAUSES—Ejectment.—Where a jurisdictional allegation in a petition for removal is traversed, it must be established by proof.—Davies v. Wells U. S. C. C., M. D. Pa., 134 Fed. Rep. 159.

160. REPLEVIN—Return of Process.—Fact that a writ of replevin directed summons to issue on Sunday, so that a second writ was necessary, held not to affect the probative force of the return to the first writ as showing defendant's possession. Rev. St. 1899, § 3850.—American Nat. Bank v. Strong, Mo., 85 S. W. Rep. 639.

161. REWARDS—Payment of Fund Into Court.—Where in an action for a reward for the arrest of a fugitive charged with crime, the offerer pays the money into court, the court, in determining who is entitled thereto, held required to consider the reward as alleged in the complaint.—Atwood v. Armstrong, 92 N. Y. Supp. 596.

162. SALES—Breach of Warranty.—Notifying banks not to purchase a note given for mules purchased is no defense to an action for breach of warranty.—Doyle v. Parish, Mo., 85 S. W. Rep. 646.

163. SALES—Damages for Breach.—In action for price of brick, measure of defendant's damages for failure to deliver defined.—Iowa Brick Mfg. Co. v. Herrick, Iowa, 102 N. W. Rep. 787.

164. SALES—Delivery of Inferior Quality.—In determining the amount of damages, where goods of a certain quality are ordered and those of an inferior quality are shipped, a resale is one of the methods.—Seaboard Lumber Co. v. Cornelia Planing Mill Co., Ga., 50 S. E. Rep. 121.

165. SALES—Duty of Buyer to Inspect Goods.—A buyer, receiving boards from a seller pursuant to an order therefor, must inspect the same on delivery, and promptly reject or store them on notice at the seller's expense.—H. Herrmann Lumber Co. v. Heideleberg, Wolf & Co., 92 N. Y. Supp. 256.

166. SALES—Mortgage of Property Conditionally Sold.—Consent by the seller in a conditional sale that the property be mortgaged to a certain corporation does not authorize its mortgage to another corporation —Lorain Steel Co. v. Norfolk & B. St. Ry. Co., Mass., 73 N. E. Rep. 646.

167. SEDUCTION—Artifices.—A combination of flattery, love making and hypnotism held a sufficient predicate for a prosecution for seduction.—State v. Donovan, Iowa, 102 N. W. Rep. 791.

168. SET-OFF AND COUNTERCLAIM—Tax Liens.—Where defendant paid taxes which were a lien on lands purchased with a covenant against incumbrances, he was entitled to set off such taxes against vendor's lien notes given for the price.—Bullitt v. Coryell, Tex., 85 S. W. Rep. 482.

169. SHIPPING—Carrier's Liability for Jewelry Taken from State Room.—Where jewelry was taken from the cabin of a passenger on a steamship, the carrier's liability was that of an insurer, in the absence of negligence on the part of the passenger.—Hart v. North German S. S. Co., 92 N. Y. Supp. 338.

170. SHIPPING—Negligence of Stevedores.—Ship held not responsible for injuries to a stevedore caused by the failure of a hatch cover to fit the hatch, although the ship's mate told the stevedore's foreman that the covers would fit.—The Elleric, U. S. D. C., N. D. Cal., 134 Fed Rep. 146.

171. SHIPPING—Negligence of Vessel's Physician.—The errors, mistakes or negligence of a ship's doctor in caring for a passenger, are not imputable to the ship, where it was not guilty of negligence in selecting him.—The Napolitan Prince, U. S. D. C., E. D. N. Y., 134 Fed. Rep. 159.

172. SPECIFIC PERFORMANCE—Defect of Title.—Specific performance will not be denied a vendor on the ground that there are apparent defects in his title, where the evidence shows such defects to be dormant and of no validity against the property.—Gibson v. Brown, Ill , 73 N. E. Rep. 578.

173. SPECIFIC PERFORMANCE—Jurisdiction.—An action between residents of Iowa for specific performance of a contract for the sale of real estate in another state is within the jurisdiction of the Iowa courts.—Rea v. Ferguson, Iowa, 102 N. W. Rep. 178.

174. SPECIFIC PERFORMANCE—Past Consideration.—Where deceased agreed to convey certain land to complainant in consideration of past services and money loaned, but failed to do so, complainant had an adequate remedy at law to recover therefor against decedent's solvent estate.—Brevator v. Creech, Mo., 85 S. W. Rep. 527.

175. STREET RAILROADS—Contributory Negligence.—In an action for injuries caused by plaintiff's wagon being struck by a street car, evidence held to justify submission of the issues of defendant's negligence and plaintiff's contributory negligence.—Freymark v. St Louis Transit Co., Mo., 85 S. W. Rep. 606.

176. STREET RAILROADS—Killing Horse.—In an action against a street railway company for killing plaintiff's horse, held a question for the jury whether or not a given act constituted negligence on the part of the defendant.—Georgia Ry. & Electric Co. v Blacknall, Ga., 50 S. E. Rep. 92.

177. STREET RAILROADS — Rights of Pedestrians at Crossing.—A pedestrian, about to cross a street car track, who sees a car approaching, has no right to assume, of course, that the car will be controlled and the speed slackened.—Toohey v. Interurban St. Ry. Co., 92 N. Y. Supp. 427.

178. TAXATION - Notice to Owner of Tax Sale.—After sale for delinquent taxes, a notice to the owner of the fee by the purchaser sufficiently complied with the statute, though addressed to him as "mortgagee."—Bradley v. Williams, Mich., 102 N. W. Rep. 625.

179. TAXATION—Tax Sale Under Defective Publication.—A defect in the proof of publication of the notice of the sale of land for taxes is immaterial in an action to set aside the deed of the purchaser.—Palmer v. Ozark Land Co., Ark., 85 S. W. Rep. 408.

180. TAXATION—Voluntary Payment by Stranger.—Where a stranger to the title, under the mistaken belief that he had a tax deed to the land paid the taxes, it creates no obligation on the owner of the land to repay.—Bryant v. Nelson-Frey Co., Minn., 102 N. W. Rep. 859.

181. TELEGRAPHS AND TELEPHONES—Delay in Delivery.—Failure to deliver a telegram within a reasonable time raises the presumption of negligence.—Arial v. Western Union Tel. Co., S. Car., 50 S. E. Rep, 6.

182. TELEGRAPHS AND TELEPHONES—Failure to Deliver.—Attorney's fees, depending on the amount of recovery, held too remote and uncertain for recovery as damages for failure to deliver a telegram —Sweet v. Western Union Tel. Co., Mich , 102 N. W. Rep. 850.

183. TELEGRAPHS AND TELEPHONES—What Law Governs Message.—The contract for sending telegram held to be governed by the law of the state where it was delivered for transmission.—Hancock v. Western Union Tel. Co., N. Car., 49 S. E. Rep. 952.

184. TORTS—Offer to Repair.—In an action for injuries to plaintiff's property, it was no defense that defendants had offered to repair the injuries, and that plaintiff had declined to accept the offer.—Berry v. Ryan, Colo , 79 Pac. Rep. 977.

185. TRIAL—Abandonment of Homestead.—In a suit by a wife to recover the homestead of her husband, refusal to permit defendant to testify to statement of plaintiff's husband concerning his intention to return to the homestead held not cause for reversal.—Newton v. Russian, Ark., 85 S. W. Rep. 407.

186. TRIAL—Assault by Employee on Steamboat Passenger.—In an action by a passenger on a steamboat for an assault by the captain, testimony as to the custom of arousing passengers in the morning held properly stricken out.—Levidow v. Staring, Conn., 60 Atl. Rep. 123.

187. TRIAL—Instructions.—A correct charge is not erroneous for an omission to charge in the same connection an additional pertinent legal proposition.—Tucker v. Central of Georgia Ry. Co., Ga., 50 S. E. Rep. 128.

188. TRIAL—Reading Parts of Depositions.—Where a party reads the cross-examination of witnesses from depositions taken by his adversary, the latter, if he wishes their direct examination, should read it himself.—McDonald v. Smith, Mich., 102 N. W. Rep. 668.

189. TRIAL—Reopening Case After Granting Nonsuit.—After plaintiff has closed, and the court has announced that a motion for nonsuit will be sustained, it is discretionary with the court to allow plaintiff to reopen the case to introduce additional testimony.—Brooke v. Lowe, Ga., 50 S. E. Rep. 146.

190. TROVER AND CONVERSION—Failure to Show Value of Property Converted.—Where plaintiff in trover elects to take a money verdict, but fails to show the value of the property converted, the awarding of a nonsuit is proper —Brooke v. Lowe, Ga , 50 S. E. Rep. 146.

191. TRUSTEE—Shares of Stock.—On an issue whether a trustee of stock became the beneficial owner thereof, certain evidence held favorable to the continuance of the trust.—*In re* Fisher's Estate, Iowa, 102 N. W. Rep. 797.

192. TRUSTS—Costs of Trustee in Defending Ejectment Suits.—Where one holding an interest in lands in fee and the remainder as trustee for others, expended money in the *bona fide* defense of an ejectment suit, he had a right to look to the trust property for the proportionate reimbursement.—Coffman v. Gates, Mo., 85 S. W. Rep. 657.

193. TRUSTS—Furnishing Consideration for Conveyance.—In a suit by a husband to quiet title to land standing in the name of the wife, on the ground that he furnished the consideration, the burden held on plaintiff to establish his claim by convincing evidence.—Hicks on v. Oulbert, S. Dak , 102 N. W. Rep. 774.